The Solicitors' Journal

Vol. 91 — Saturday, May 3, 1947 — No. 16

CONTENTS

CURRENT TOPICS

Reform of Procedure

THE Lord Chancellor has set himself the high aim, or, to use political jargon, the "target," of achieving equality for all before the law. So long as litigation is out of the reach of most people by reason of its cost, equality exists only in the imagination. Some progress has already been made towards removing inequality and, in addition to the Rushcliffe scheme for legal aid, which will soon be before Parliament, further action is necessary to reduce legal costs in the courts. On 24th April it was announced that the Lord Chancellor had appointed two separate committees to consider the present practice and procedure of the High Court and the county court respectively. The High Court committee is to sit under the chairmanship of Lord Justice EVERSHED. Among its distinguished members are two other High Court judges, the Treasury Solicitor and the Chief Taxing Master. As compared with the Bar, solicitors are not strongly represented in number, Mr. ARTHUR J. DRIVER and Mr. W. C. NORTON being the only solicitor members. The presence of personalities such as Professor GOODHART, Mr. GEOFFREY CROWTHER, Sir ALAN P. HERBERT, Professor MARSHALL and Sir ARNOLD GRIDLEY will ensure an impartial investigation in the public interest without regard to vested interest, if any. Sir Arnold Gridley is President of the Association of British Chambers of Commerce, and it will be recalled that the New Procedure, which died an unexplained and undeserved death, was born as a result of representations by the Chambers of Commerce as to the cost of litigation. One of the results of their activities was the extension of the summary procedure under Ord. 3, r. 6, to a wider range of actions.

Scope of Inquiries

PRACTICE and procedure in patent actions and in the Divorce Division, at present the care of the Swan Committee in the former case and the subject of the Denning Committee's proposals in the latter case, are necessarily excluded from the terms of reference of the Evershed Committee. The work of previous committees has not been forgotten, and this committee is specifically charged to make recommendations on the proposals contained in the reports of the Hanworth Committee and the Royal Commission of 1934–36. One of the matters which will certainly come under review is the double appeal to the Court of Appeal and the House of Lords. Modifications of the rights of appeal (excluding matrimonial appeals from the magistrates' courts) are within the terms of reference, and a special clause in the terms of reference requires the committee to consider what appropriate machinery might be evolved to enable cases involving points of law of exceptional public interest (arising in any division of the High Court or in the Court of Appeal) to be determined wholly or partly at the public expense, whether by making the Attorney-General or the King's Proctor a party to litigation or otherwise. The County Court Committee is under the chairmanship of Mr. Justice AUSTIN JONES who, it will be remembered, was a county court judge from 1931 before being promoted to the High Court Bench in 1945. There are three solicitors, Mr. STUART EVANS, Mr. LESLIE HALE, M.P., and Mr. G. CORBYN BARROW, and two county court registrars, Mr. GILBERT HICKS, of Shoreditch County Court, and Mr. C. W. MARSHALL, of Ipswich County Court, on the committee. One of the most difficult and important questions for both committees will be that of affidavit evidence. If it is made compulsory, subject to permission to cross-examine on an affidavit, it will enormously cheapen litigation. *The Times*, in a leader of 24th April, considered that "the argument for reducing counsel's fees and solicitors' charges can easily be carried too far." Looking through the county court scale, with its handsome awards of one shilling here and 3s. 4d. there, we are inclined to agree.

Lay Magistrates

THE Home Office witnesses before the Royal Commission on Justices of the Peace gave evidence on 21st February, 1947, and their testimony has now been published in the tenth of the series of reports by H.M. Stationery Office (price 9d.). Of the many matters discussed, few are more interesting than the facts and opinions they expressed concerning lay and professional magistrates. There are sixteen stipendiary magistrates in the country, apart from Metropolitan stipendiaries, and many boroughs, whether through failure to petition for a fresh appointment after death of a particular stipendiary, or from some other cause, have reverted to a lay bench. In another part of their memorandum the Home Office said: "It is right to say that the number of cases in which any grounds for action by the Home Secretary are disclosed is few in proportion to those examined . . . Cases in which there has been a manifest miscarriage of justice are infrequent." In answer to close questioning, the witnesses agreed that the use of the Royal Prerogative was not a procedure which could be used to iron out discrepancies between sentences in different courts, and they agreed that there was considerable diversity of practice

1

LAW LIBRARY

in awarding sentences of imprisonment and in the use of the probation system. Within certain limits there must, of course, be diversity. No one case is a complete precedent for another, but if, as appears to be the case, it is clear that different standards of punishment prevail in different areas, the time for reform has arrived. Whether that consists in amelioration of the present system by introducing compulsory training in law and penology for lay magistrates or in some more radical reform will be for the Commission to determine.

Bench and Bar: A Dispute

MEMBERS of the Bench and the Bar in England, as well as magistrates and solicitor advocates, will desire to be fully acquainted with the details of an unusual dispute which illustrates and throws some light on the respective functions of judge and advocate in the administration of justice. The trouble began at the Naas Circuit Appeal Court, Eire, on 7th March, when Mr. T. A. DOYLE, barrister, making a renewed plea on behalf of a man sentenced to imprisonment and a fine for dangerous driving, was told by Judge FAWSITT that he had given his final decision. On Mr. Doyle stating that he intended to press the case the following colloquy ensued :—

" Judge—I told you to sit down.
Mr. Doyle—I will not sit down.
Judge—Will the sergeant come forward.
Mr. Doyle—I wish to point out to you, sir,——
Judge—Remove Mr. Doyle, sergeant. I have given you every chance."—(*Irish Times*, 10th March).

Mr. Doyle protested and the sergeant accompanied him out of court. The Eire Bar Council passed a resolution on 31st March, as a result of which requests were made for adjournments by solicitors who were unable to get members of the Bar to accept briefs in Judge Fawsitt's court. On 21st April, at Trim Circuit Court, Judge Fawsitt publicly addressed Mr. T. A. Doyle, and said that he was pleased to see him again in court, and that he had come there at his invitation. In the course of an explanatory speech, the judge said that it was the traditional right of a barrister briefed in a case to be allowed to address the court. He added that a judge had power, whenever a barrister was guilty of contempt, to attach him, and if he was guilty of disorderly conduct, it was in the judge's discretion to order his removal from court. With this general statement it would be difficult to quarrel, but the occasion must indeed be serious which calls for so strong a remedy as attachment. It is significant that there are few cases reported in which judges have felt obliged to use their power against advocates (see *Re Johnson* (1887), 20 Q.B.D. 68; *Re Pater* (1864), 5 B. & S. 299). Judges, too, can be guilty of a misdemeanour if they unlawfully prevent a barrister or solicitor from exercising his profession in their courts (*R.* v. *Marshall* (1855), 4 El. & Bl. 475). We hope that if ever the occasion arises the appropriate professional associations in this country will respond with the same dignity and decision as the Eire Bar Council.

Nottingham Incorporated Law Society

THE Nottingham Law Society, consisting of 144 members, has had a continuous existence since 1875 and, as shown by its report for 1946, is still in a highly flourishing state. In September, 1946, University College, Nottingham, established a full-time Department of Law which, having been recognised by The Law Society as an approved law school, takes the place of the former East Midlands Law School. Mr. F. R. CRANE, LL.B. (a solicitor), was appointed Professor of Law and Head of the Department, and is being assisted (part-time) by Mr. W. A. BOOT (Day, Johnson & Boot) and Mr. A. C. G. ROTHERA (Rothera, Sons & Husbands). The council resolved that from 1st October, 1946, the existing practice of reading conditions of sale at auctions be discontinued, and that in lieu the conditions be deposited with the auctioneer seven days before the sale, the auctioneer stating in his advertisements and particulars that the conditions are open for inspection at his office and at the office of the vendor's solicitor for seven days before the sale, and that a purchaser shall be deemed to buy with full knowledge whether he inspects the same or not. All members of the society and all auctioneers in the City and County of Nottingham were informed accordingly. A letter was subsequently received from the Nottingham and District Property Owners' Association, Ltd., requesting a return to the old procedure on the ground that the new practice is not in the best interests of property owners. To meet this objection, the council resolved (subject to confirmation by members at the annual general meeting) that their previous resolution be amplified to the effect that the auctioneer be asked to announce at the commencement of each sale that the vendor's solicitor will answer questions on the conditions and read the conditions of any particular lot if requested. Prior to the publication of the Accountant's Certificate Rules, a draft was received for consideration by the society. The council's main criticism of the draft was that the accountant was to be under a duty to extract ledger balances at two selected dates, whether or not a complete audit is carried out. It was felt that there was no point in this, when the accountant makes a complete annual audit, and that it would only result in unnecessary additional expense. As a result of the recommendations of the council, The Law Society agreed to insert the final note to r. 4.

Town and Country Planning Bill: Compensation Amendments

FOLLOWING undertakings given by the Chancellor of the Exchequer in the debate on 30th January, on the second reading of the Town and Country Planning Bill, and on 21st March, in the debate on the War Damage (Increase of Value Payments) Order, the Government have put forward a number of important amendments to the Town and Country Planning Bill. The general effect is to modify the harsh " 1939 standard " of compensation which has applied since 1944. In the case of acquisitions after the date of the Royal Assent to the Bill, current market value will be the basis, but will be calculated on existing use, development value being excluded. " Current market value " for acquisitions between the date of the Royal Assent and the appointed day will be the value current at 7th January, 1947. The right to claim against the £300,000,000 set aside to compensate owners for development values is preserved for owners compensated on the basis of current market value. The fact of vacant possession, if any, which inflates the market price is to be ignored, by the method of valuing properties so affected as if they were subject to notional leases ending on 1st January, 1954. This is not to apply to agricultural properties or properties controlled by the Rent Acts. The amendments should go far towards satisfying those who have criticised the compensation provisions of the Bill.

Development in Areas of War Damage

THERE has just been published a report of the Central Advisory Committee on Estate Development and Management in War-Damaged Areas (H.M. Stationery Office, price 1s.). Among the estate development recommendations, one which is of interest to solicitors is that " provision of offices over shops should be based on conservative estimates of probable demand " because " the popularity of specially designed office buildings is likely to increase." As to the disposal of land, the report favours the leasehold system of large estates because " it provides for a division of function between the landlord, who lays out and manages the estate in accordance with a long-term policy, and lessees who attend to the building development." It is recommended, in the interests of " periodic redevelopment," that lessees should write off their buildings over the period of their estimated useful life either by a lump sum purchase of a leasehold redemption policy or by yearly payments into a sinking fund. The length of leases of building sites in a central area should be governed by the likely period of useful life of the proposed development as a whole. The average term recommended for commercial and industrial buildings is seventy-five years.

In view of the abnormal uncertainty which is likely to exist concerning the rental value of the land at the time when disposals are made, it is recommended that leases in areas where, in the opinion of the Minister, it is necessary, should provide for a single review of ground rents.

Disposal of War-Damaged Land

MANY of the buildings left in war-damaged areas will have to continue in use for longer or shorter periods. The Ministry of Town and Country Planning's Central Advisory Committee recommends that where existing buildings conflict with the plan in use or location, they should be given only a short life and let at rack rents. Commercial and industrial buildings which are in conformity with the plan and are suitable for the grant of a longer life may, in the committee's opinion, be let at rack rents up to fourteen years, or in certain cases for longer periods, possibly on the basis of rent and premium. The fairness or otherwise of this proposal will depend on the promptitude with which planning is carried into effect. Delay will render discrimination between the rents of different buildings meaningless and unjust. To reduce defaults of builders, the committee proposes that building agreements should be made in which the developer has no estate in the land until the building is completed, and many recommendations as to necessary clauses in such agreements as well as in ground leases of commercial and industrial buildings are made in the report and will be found useful by solicitors negotiating on behalf of clients for leases of properties in war-damaged areas.

Recent Decisions

In *A. Richardson and Son* v. *Middlesbrough Rating Authority and Others*, on 24th April (*The Times*, 25th April), a Divisional Court (the LORD CHIEF JUSTICE and ATKINSON and OLIVER, JJ.) held that an egg-packing station, consisting of two floors in a building, the rooms of which were used for washing and inspecting eggs, grading and stamping them by machinery and packing and stacking them for collection by wholesalers, was an industrial hereditament because, although it was used for the purpose of a distributive wholesale business within the proviso to s. 3 (1) of the Rating and Valuation (Apportionment) Act, 1928, the processes to which the eggs were subjected on the premises constituted "an adaptation for sale" within the proviso, as they could not legally have been sold before they were sorted and graded.

In *Re 36 to 42 Jamaica Street, Stepney*, on 25th April (*The Times*, 26th April), the Court of Appeal (the MASTER OF THE ROLLS, and COHEN and ASQUITH, JJ.) upholding the decision of VAISEY, J., held that they were unable to read into a report of the War Damage Commission's technical officer that pre-existing defects in walls occasioned their instability or were such as to render them unsound before the occurrence of bomb blast, and therefore the commission were responsible for 100 per cent. of the cost of the works. The court held that the case turned on its own facts, and kept open the question whether in some other case the facts might not justify an apportionment.

In *Askew* v. *Botell*, on 25th April (*The Times*, 26th April), a Divisional Court (the LORD CHIEF JUSTICE and ATKINSON and OLIVER, JJ.) held that a conductor of a tram car was not guilty of unlawfully endangering the safety of a passenger through negligence, contrary to s. 48 of the Stage Carriages Act, 1832, by reason merely of the fact that he was on the top of his tramcar at a compulsory stopping place, because he was entitled to assume that the driver would stop at the compulsory stopping place and that passengers would not get off before the vehicle came to a stop, and if they did so it would be at their own risk. Once the tram had stopped it would be the conductor's duty to see that it did not go on until passengers had got safely off and on.

TOWN AND COUNTRY PLANNING BILL—VI

THE provisions relating to compulsory purchase must be looked for in two places: first, in cl. 5, which deals with designation in the development plan, and second, in Pt. IV, originally Pt. III, which relates to acquisition of and dealings with land.

By cl. 5 (2), the development plan of the local planning authority, which they have to prepare within three years and review every five years or more often, may designate as land subject to compulsory acquisition any land required by any Minister, local authority or statutory undertakers for the purposes of any of their functions, any land in an area which is to be developed or redeveloped as a whole or required for relocation of population or industry or replacement of open space in connection therewith, and any other land which in the opinion of the local planning authority is likely to require compulsory acquisition for the purpose of securing its use in the manner proposed by the plan. The Minister may not approve such designation unless he is satisfied that the acquisition of the land is likely to take place, if at all, within fifteen years, except in the case of land required by any Minister, local authority or statutory undertakers for the purposes of any of their functions, when the period is ten years (cl. 5 (3) (*a*), as amended).

One of the main advantages advanced in favour of this system of designation is that it enables owners to know with reasonable certainty whether or not their land will be taken from them within fifteen years, but it must be noted that—

(1) existing powers of compulsory acquisition of Ministers, local authorities and statutory undertakers, for their statutory functions, are not dependent on the land being designated, though no doubt strong pressure will be brought to bear on them to arrange for designation of all the land they require. The fifteen-year security period for undesignated land is, therefore, to a certain extent illusory, and further, a development plan may be altered at five year intervals or earlier, and, as mentioned, for certain purposes the period is ten years only. On the other hand, prospective purchasers will find it convenient to be warned off designated land;

(2) there is nothing to enable an owner to require his designated land to be purchased, so that he may be left with a property very difficult to dispose of for fifteen years and which he may well feel disinclined to improve or keep in first-class order. His only remedy will be to serve a purchase notice under cl. 17, which we have discussed, but before he can do this he will have to apply for a development permission, and then, if it is refused, as it probably would be, to prove that his land was incapable of reasonably beneficial use. This can only be regarded as a roundabout method which will in very many cases be inapplicable.

If land is proposed to be designated or is designated for acquisition, say, for industrial purposes, it may be that the owner will himself wish to carry out industrial development. In such a case, if he can satisfy the local authority and the Minister of his *bona fides*, he may, where designation is proposed, be able successfully to object to it, or, if the land is designated when he comes to it, he may by arrangement be able to obtain its de-designation by an amendment of the plan.

The procedure in connection with the making of development plans provides fully for notice and objection (cl. 9).

Before leaving the subject of designation, it should be mentioned that in Committee an amendment was made to the Bill which reverses the effect, so far as the Bill is concerned, of the decision in *Phœnix Assurance Co., Ltd.* v. *Minister of Town and Country Planning* (1947), 91 SOL. J. 133, so that land or property may be included in an area designated for development or redevelopment as a whole regardless of whether it is itself in need of development or redevelopment.

We now pass to Pt. IV, and, assuming that our land has been designated under the foregoing provisions, must be

careful to see for what purposes it has been designated. If it has been designated for acquisition for the purposes of the functions of any Minister, local authority or statutory undertakers, then its compulsory acquisition may be authorised by the appropriate Minister, and the standardised procedure set out in the Acquisition of Land (Authorisation Procedure) Act, 1946, will apply. It will be recollected that this procedure is of two types :—

(1) under s. 1, what may be called the normal procedure, corresponding to the procedure which has been in force for many years under the Public Works Facilities Act, 1930, and other Acts, and providing for the making of a compulsory purchase order, advertisement, notices, objections and hearing or public inquiry followed by confirmation ; and

(2) under s. 2, which is in force for five years, what may be called the speedy procedure where the Minister is satisfied that it is urgently necessary in the public interest that the acquiring authority should be enabled to obtain possession without delay, providing for advertisement in one or more local newspapers, service of notices on owners, who have fourteen days to make objections (which must be considered by the Minister, though he is not required to hold any hearing or inquiry), and for possession to be obtained at any time not earlier than seven days or later than three months after the Minister has given his authorisation ; or, put shortly, an owner may be dispossessed without any inquiry twenty-two days after the service upon him of the notice.

The speedy procedure is at present only available to local authorities, development corporations under the New Towns Act, 1946, and the Minister of Transport and Board of Trade. The effect of cl. 35 is to extend its availability to other Government Departments and to statutory undertakers, and while a local authority, after due consideration itself, has to satisfy the appropriate Minister of the urgent necessity of utilising the procedure, where a Government Department acts, the appropriate Minister will in effect have to satisfy himself on the point.

If the land has been designated for acquisition for development or redevelopment of an area as a whole, or for the purpose of securing its use in the manner proposed by the development plan, the Minister of Town and Country Planning may authorise (cl. 36) the county borough or county district council concerned or any other local authority to acquire it, and the normal procedure of the 1946 Act described above applies, the speedy procedure being inapplicable. Where the Minister is satisfied that it is expedient to empower the authority to enter on the whole or any part of the land and secure its vesting in them before the expiration of the time which would be required for the service of notice to treat, he may apply to the orde. the provisions of Sched. VI to the Town and Country Planning Act, 1944, for expedited completion (cl. 37). This, however, only takes effect after the preliminary procedure of s. 1 of the 1946 Act has been carried out and the compulsory purchase order confirmed, and does not suffer from the objections which can be advanced to the s. 2 speedy procedure.

There is an important provision in cl. 43, that the confirming authority or a Minister, as the case may be, may disregard any objection to a compulsory purchase order which amounts in substance to an objection to the proposed use defined in the development plan. In other words, owners must pursue as strongly as they can any objection they may have on this account during the making of the development plan and not wait until the compulsory purchase stage is reached.

Clause 41 enables the Central Land Board to acquire land for their functions, including its disposal for development, and the Minister may authorise the Board to acquire designated land compulsorily under cl. 36, including, if necessary, the expedited completion procedure, but not the speedy procedure. Hitherto planning authorities have suffered from the difficulty of having to say to a prospective developer : " We cannot allow you to develop here ; the proper place for your development is there, but if the owner is unwilling to sell to you we are sorry we cannot assist you." Compulsory acquisition through the medium of the Central Land Board will overcome this, and if a developer wishes to develop designated land which the owner will not sell to him, it is the intention that he should be able to approach the Board and buy it from the Board at a price including the development charge, the Board having taken the necessary action to acquire the land. The Minister has stated that the intention is that the Board will dispose of the freehold of land acquired by it. On the other hand, by s. 19 (5) of the 1944 Act, which is incorporated in Pt. IV of the Bill, the Minister is not to give consent to a local authority to dispose of land acquired by it under this Part, by way of sale of the freehold or a lease for more than ninety-nine years, unless he is satisfied that there are exceptional circumstances which render such disposal expedient.

It remains to refer to the position of compulsory purchase before a development plan is approved. Existing powers remain in full force, and (cl. 35 (2)) the Minister of Works and the Postmaster-General are given power to acquire land compulsorily for the public service or otherwise for the functions of the Minister, or for the purposes of the Post Office. By cl. 36 (2), if the Minister of Town and Country Planning is satisfied that the acquisition of any land is expedient for a purpose which appears to him to be immediately necessary in the interests of the proper planning of the area, he may authorise a local authority or the Central Land Board, if required for their functions, including disposal for development (cl. 41 (2)), to acquire it compulsorily under this clause, which, as mentioned, excludes the speedy procedure.

The subject of compensation has advisedly not been dealt with in this article, as the 1939 ceiling basis, which appeared in the Bill as originally drafted and was not altered in Committee, has been under consideration. The Government on 24th April tabled a series of amendments the substantial effect of which is that the 1939 ceiling with its supplement for owner-occupiers is to be abandoned, and compensation is to be assessed at current market value excluding development value and excluding any inflation attributable to vacant possession being available. In the case of acquisitions between the date of the Royal Assent and the appointed day current market value will be the value current at 7th January, 1947. The subject of compensation will be dealt with in detail in a later article.

DIVORCE LAW AND PRACTICE

RECENT PRACTICE DECISIONS

It is intended in this issue to refer to two recent decisions which are of importance as affecting (1) the practice in the Court of Appeal with regard to a wife's security for her costs of her appeal, and (2) the practice with regard to the dispensing of naming and making an alleged adulterer a co-respondent.

(1) *Security for wife's costs*

A very important point came before the Court of Appeal in *Roman* v. *Roman* [1947] 1 All E.R. 434, in connection with the right of a wife, who was appealing against a decree *nisi* of divorce granted to her husband on the ground of her cruelty, to obtain from her husband an order for security of her costs of the appeal. In giving the considered judgment of the court, Morton, L.J. (as he then was), referred to the fact that the careful researches of counsel on both sides had failed to reveal any case in the history of that court in which a party, successful in the court below, had been ordered by that court to give security for the costs of an appeal by the unsuccessful party, but that court had on three occasions considered the question whether it could and should order an appellant

husband to give security for the costs of the appeal of a respondent wife, and he pointed out that the question then to be decided had been specifically left open on the last occasion when the matter was before it in *King* v. *King* [1943] P. 91. In that case a motion was made by a wife for security for her costs of her husband's appeal, the husband's petition for divorce on the ground of his wife's adultery having been dismissed on the ground that she had not committed adultery with the co-respondent. In the court below, security for the wife's costs had been ordered, and in an affidavit sworn by her she stated that she was without means to finance her costs of the appeal. The motion was heard before a full court, and after two previous motions were referred to (in one of which, that by a wife respondent to her husband's appeal against a decree granted against him, no order was made, and in the other, that by a husband who was appealing against the dismissal of his petition alleging adultery by his wife, an order was made for security both of the wife's costs and of those of the co-respondent), an order was made for security of the wife's costs, the matter being referred to the registrar to fix the amount. In arriving at this decision, the court expressly limited its decision to cases like the case then before it, where the wife was respondent to the appeal, and the question was left open as to whether the rule of ordering security should be regarded as equally enforceable in the case of a wife seeking to appeal from a decision against her. In *Roman's* case, as it has been stated, this question has now arisen, with the exception that the charge against the wife was that of cruelty and not adultery as in the previous case.

This question of jurisdiction, however, has still been left open since the court were of opinion that the jurisdiction, if it existed, was one which should be exercised sparingly, and that in the motion then before it, where the appellant wife was in receipt of a weekly sum from her husband under a court order and also had sufficient estate of her own to pay her own costs, it should not be exercised. In coming to this conclusion the court stated that this question was one of great importance and that it might be that, if and when it arose, it should be considered by a full Court of Appeal. Such a decision will be awaited with interest.

(2) *Dispensing with naming and making alleged adulterer a co-respondent*

In *Sage* v. *Sage*, and *Stockbridge* v. *Stockbridge* [1947] 1 All E.R. 492, applications were made on behalf of the husband petitioner in each case for an order giving leave to proceed with the petition without naming the alleged adulterers, and in view of the importance of the decision as to the practice of the court in this respect, and of the likelihood of a similar position arising in the future, particularly in service cases in which the only evidence of adultery relied on is that of the birth of a child to the wife, non-access on the part of the husband being proved, a short review of the judgment may be of value.

It may first be mentioned that the present statutory enactment governing the matter is s. 177 of the Judicature (Consolidation) Act, 1925, subs. (1) of which reproduces the provisions of s. 28 of the Matrimonial Causes Act, 1857, and provides: "On a petition for divorce presented by the husband or in the answer of a husband praying for divorce the petitioner or respondent, as the case may be, shall make the alleged adulterer a co-respondent unless he is excused by the court on special grounds from so doing," and the relevant words of the rule in the Matrimonial Causes Rules, 1944, r. 5, read: "unless otherwise directed, where an alleged male adulterer is named in a husband's petition for divorce . . . such alleged adulterer shall, if living at the date of the filing of the petition, be made a co-respondent in the cause . . ."

With regard to the position where the name and identity of the adulterer are unknown, it was held in *Pitt* v. *Pitt* (1868), L.R. 1 P. & D. 464, that even in such a case it was necessary to apply for leave to proceed without making him a co-respondent, the words "alleged adulterer" in s. 28 of the Act of 1857, *supra*, not meaning a person charged by name in the petition, but that in every case where adultery was charged there was an alleged adulterer. The principle of this decision was applied in *Eastham* v. *Eastham* [1943] P. 53, where it was stated by Pilcher, J., that it was still necessary under s. 177 (1) of the Act of 1925, *supra*, to make every alleged male adulterer, named or unnamed, a co-respondent unless excused by the court from doing so on special grounds. The point arose in that case by reason of the altered wording of the then r. 5 of the Matrimonial Causes Rules, 1937, which is identical with r. 5 of the 1944 rules which has been set out above, and which differed from the old r. 5 of the 1937 rules for which it was substituted by r. 3 of the Matrimonial Causes (Amendment) (No. 1) Rules, 1943. This old r. 5 provided that: "unless otherwise directed, where a petition for divorce . . . alleges adultery every alleged adulterer, if male, and living at the date of the filing of the petition, shall be made a co-respondent in the cause," and it was unsuccessfully argued by the petitioner, who was appealing against an order by the registrar that an order dispensing with the naming of a co-respondent was necessary before a certificate could be granted that the case was ready for trial, that since the new r. 5, as substituted, did not deal with unnamed adulterers, it was not necessary in such a case to obtain an order dispensing with the naming of a co-respondent. It may be noted on this point of the case that the new r. 5 of the Matrimonial Causes Rules, 1947 (referred to *ante*, p. 200) which came into operation on 1st May, has reverted to the wording of the old r. 5 of the 1937 Rules, *supra*, in omitting the words "if named," reading "unless otherwise directed, where in a husband's petition there is a charge against a male adulterer, the alleged adulterer shall, if living at the date of the filing of the petition, be made a co-respondent in the cause . . ."

Coming now to the main point in the judgment in the cases under discussion, Willmer, J., pointed out that the question to be decided was one for the discretion of the court, and he stated that following upon two earlier cases, one in the Court of Appeal, that of *Saunders* v. *Saunders* [1897] P. 89, and *Edwards* v. *Edwards and Wilson* [1897] P. 316, it was impossible to lay down any rule of general application, but that each case must be decided on its own merits. In his judgment he stated that the burden under the Act was upon the husband to make out his case for relief, by showing "special grounds," and that this burden must be discharged on the facts of each particular case; he did not at all assent to the proposition that the mere fact of the prevalence at any particular time of a particular class of case afforded any valid reason for relaxing in favour of husbands the plain requirements of the Act, and he desired to leave no doubt that in his judgment the public interest was the paramount consideration.

He went on to point out, however, that there were certain questions which the court might well ask itself in each particular case in arriving at a decision, and these may be briefly summarised as follows:

(1) Is there any ground for suspecting that a false case is being presented?

(2) Is there any ground for suspecting that the husband has connived at the adultery of his wife?

(3) Has the husband, in fact, taken all reasonable steps to see whether evidence against the alleged adulterer can be obtained?

(4) What is the hardship that the husband will suffer if the court insists on the alleged adulterer being made a co-respondent?

(5) Will any unnecessary hardship be imposed on the alleged adulterer by naming him and making him a co-respondent?

Bearing these considerations in mind he granted leave in *Sage's* case, but refused it in *Stockbridge's*. It may in conclusion be noted that, in *Sage's* case, while he gave such leave to proceed without making the alleged adulterer a co-respondent, in view of the fact that a name had been furnished by the wife he did not think that it would be right to dispense with naming the alleged adulterer, but it would be quite proper for the petition to allege that the wife "committed adultery with a man whose name is stated by the respondent to be A.B., but whose identity is unknown to the petitioner."

COMPANY LAW AND PRACTICE

UNDISTRIBUTED PROFITS IN A WINDING-UP

WHEN a solvent company is in liquidation the surplus assets available, after payment of creditors and the costs of liquidation, for distribution among the shareholders may, and often do, in part represent profits of the company made before it went into liquidation and not distributed by way of dividend. The question may then arise whether such part of the surplus assets as does represent profits ought to be distributed among the shareholders in accordance with their rights in the profits of the company or whether all the surplus assets, including any part which represents profits, are to be distributed without regard to the shareholders' rights in profits and in accordance simply with their rights to share in the surplus assets from whatever source derived. The answer to the question depends entirely upon the proper construction of the relevant provisions of the company's memorandum and articles, but it may be said that, generally speaking, provisions (usually in the articles) for the division of profits in a specified way or conferring rights to dividend relate only to the period in which the company is a going concern and cease to have any relevance once liquidation has commenced; and that after liquidation the respective rights of the shareholders in the surplus assets (whether or not those assets represent profits) are determinable by reference to the provisions of the articles (or of the general law) which deal with surplus assets. To put it in another way, rights to share in the profits of a company normally exist in the form of rights to dividend; and normally rights to dividend come to an end as soon as liquidation begins, when rights to share in the surplus assets come into existence, and accordingly the fact that the assets may represent profits is irrelevant since there no longer exist rights in the profits as such.

In *Re Crichton's Oil Co.* [1902] 2 Ch. 86 there were preference and ordinary shares, and by the articles the preference shares were entitled to a 5 per cent. cumulative preferential dividend, and the surplus assets in a winding-up were to be distributed between the holders of preference and ordinary shares according to the amounts paid up on the shares. The articles also provided that the profits available for dividends should be applicable first in paying the preferential dividend and secondly in paying dividends on the ordinary shares; and there were usual provisions for the declaration of dividends by a general meeting and empowering the directors to set aside profits to reserve. The preference dividend was not paid for some years and the company went into voluntary liquidation, and, after payment of the creditors, a surplus remained in the hands of the liquidator. In its last trading year prior to liquidation the company had made a profit which it had not distributed as dividend, and the preference shareholders claimed to have an amount equal to the profit distributed as dividend. The Court of Appeal held that they were not so entitled, and Stirling, L.J., said this: "A dividend means *prima facie* a payment made to the shareholders while the company is a going concern; after the commencement of a winding-up, dividend is no longer payable. *Prima facie*, therefore, the right of the preference shareholders was limited to the payment of a preferential dividend while the company was a going concern."

It is, of course, well settled that the right to a dividend depends on there having been a declaration of dividend, and in *Re W. Foster & Son, Ltd.* [1942] 1 All E.R. 314, Bennett, J., after referring to the *Crichton Oil Co.* case, put the matter in this way: "*Prima facie*, when a winding-up has commenced, a dividend is no longer payable. *Prima facie*, a dividend is a payment made to the shareholders whilst the company is a going concern, and when . . . there is a provision in the articles of association which enables the directors to declare a dividend, and which gives the shareholders no right to a dividend unless the directors declare it, the shareholders have no right as against the company to be paid a dividend. . . . When the decision of the Court of Appeal in the *Crichton Oil Co.* case is carefully considered, *prima facie* where a dividend is being declared either by the directors with the sanction of the company, or by the company itself in general meeting, a shareholder's right to a dividend comes to an end as soon as the company ceases to be a going concern, and as soon as the liquidation of the company begins."

It is to be observed that in these and similar cases the rights of the shareholders in profits existed as rights to "dividend"; with the commencement of liquidation, provisions as to dividend cease to be applicable, and accordingly a claim to that part of the surplus assets which represents profits cannot successfully be based on the pre-liquidation rights to dividend. It will be noted, however, that in the extracts from the judgments which I have quoted above, the statements as to the effect of a winding-up on the right to a dividend are qualified by the words "*prima facie*"; and there can, I think, be no doubt that appropriate provision can validly be made in the articles to secure that any of the surplus assets which represent undistributed profits shall be distributed among the shareholders as if they were profits available for dividend and as if the company were still a going concern. It is very uncommon, however, to find provisions of this nature, but an instance is to be found in *Re Bridgwater Navigation Co.* [1891] 2 Ch. 317. In that case there were preference shares carrying a 5 per cent. preferential dividend; subject to this, the articles provided that the entire net profits for each year "shall belong to" the ordinary shareholders, though there was the usual provision enabling the directors to set aside profits to reserve, in priority to payment of dividend. Certain reserves had been built up out of profits and had not been resorted to when the company went into liquidation. The court held that these reserves represented undrawn profits which, having regard to the provisions of the company's articles, belonged exclusively to the ordinary shareholders, and were not part of the surplus assets divisible amongst both classes of shareholders.

As has been pointed out in later decisions, the result arrived at in the *Bridgwater* case depended entirely on the particular provisions of the articles, by virtue of which the balance of profits "belonged" to one class of shareholders, whose title thereto was consequently not dependent on such profits having been made available to them in the shape of dividends; and it would seem that the court will not readily construe articles so as to reach this result unless their wording is clear and peremptory. Indeed, in *Re Madame Tussaud & Sons, Ltd.* [1927] 1 Ch. 657, Eve, J., referred to "the mischief of the *Bridgwater* judgment"; in that case the articles provided that, subject to the rights of members entitled to shares issued upon special conditions, the profits of the company should be divisible among the members in proportion to the amount paid up on their shares respectively. There were preference shares carrying a 5 per cent. dividend, and after repayment of capital on both preference and ordinary shares, there remained in the liquidator's hands a sum which was profits of the company and which the ordinary shareholders claimed belonged exclusively to them by virtue of the provisions of the article I have mentioned. Eve, J., held, however, that the wording of the article, unlike the provision in the *Bridgwater* case, did not constitute a declaration of a right to the profits, but only a stipulation as to the basis on which any division of profits was to be made (i.e., according to the amount paid up on shares, and not the number of shares held), and consequently did not entitle the ordinary shareholders to exclude the preference shareholders from sharing in the moneys in the hands of the liquidator.

In two recent cases—*Re W. Foster & Son, Ltd.*, *supra*, and *Re Catalinas Warehouses, Ltd.* [1947] 1 All E.R. 51—similar claims in a liquidation to have surplus assets, representing profits, applied in payment of dividends have been rejected by the court. In both cases, the articles provided that the preference shareholders should be entitled to receive out

of the profits of each year a fixed preferential dividend, and there were the usual articles enabling the directors to set aside profits to reserve before recommending a dividend and providing for a declaration of dividend with the sanction of a general meeting. The preference dividend had not been paid down to the date of liquidation though there were profits available; and the preference shareholders claimed in the liquidation to have the profits applied in payment of their dividend. In the *Foster* case, Bennett, J., said that the question was whether "the court can, in dealing with surplus assets after the company has gone into liquidation, regard any part of the surplus assets as being profits and so available for distribution amongst the shareholders in accordance with their rights under the company's articles of association, or whether, once the company has gone into liquidation, everything that the company has, after it has satisfied its debts, is to be regarded as surplus assets and to be distributed amongst the members without regard to the particular provisions in the articles dealing with the payment of dividends which, *prima facie*, apply only while the company is a going concern"; and he held that the articles gave only a right to a preference dividend while the company was a going concern and when declared by the directors with the sanction of the company in general meeting. This decision was followed by Wynn Parry, J., in the *Catalinas* case.

The result of the cases is, then, that a claim by a class of shareholders, based on their rights in the profits, to surplus assets in a winding-up which represent profits of the company cannot succeed unless the regulations of the company confer on the class a title to profits which is not dependent on the profits being made available to them in the form of a dividend.

A CONVEYANCER'S DIARY

TRUSTEES PURCHASING TRUST PROPERTY

A TRUSTEE cannot purchase the trust property, or any part of it, from himself. If a transaction, however it be further complicated, is in substance that, it will be voidable as a matter of course, even if it be proved to have been completely honest, or, indeed, generous to the beneficiaries, unless it is done with the leave of the court, or under an express power in the trust instrument, or with the leave of all the beneficiaries, all being *sui juris*. Various historical explanations, and shades of the same explanation, are given for this familiar rule, but the practical problem is generally how to explain it to a perfectly honest trustee who is also a prospective purchaser. The case of a less than honest trustee is much less important, because it is not at all frequent, and is in any event covered by the rule that a fraudulent transaction is voidable. But in the ordinary case I should say to the trustee that he has a duty to his beneficiaries to act in their interest in the sale, while he has, like any responsible man, a duty to himself as purchaser. These duties conflict and it would be just as unfair for the beneficiaries to get too good a price through the purchaser's proper scruples as for them to get too little. Hence the court, standing aloof, can best do what is fair to all parties.

Reasoning of this kind appears equally to apply to many cases where the trust instrument gives an express power; here it is not necessary to seek the leave of the court, but it may well be wisest to do so. If the power is invoked the purchaser may very easily pay too much.

Especially should one advise an application to the court where the transaction appears to be just, but only just, outside the mischief of the rule. Neither the opinion of the trust solicitor, nor that of counsel, precludes a subsequent purchaser from taking exception to the title, arguing what is admittedly arguable, and causing a waste of time and money. Hence the trustee-purchaser would be well advised, as a matter of insurance, to obtain an order which puts the matter beyond doubt. Of course, in some cases the premium—the costs of the application, which fall on the purchaser—will be too high, and the purchaser will prefer to take the risk; but in a substantial case it is not so.

The position is not the same, however, where all the beneficiaries are *sui juris* and agree to the sale. We say "agree" in such a case, but actually they are in a position to command, since they are entitled to call for the trust property in specie. It is thus the beneficiaries who are the true vendors and not the trustee at all. One way of drafting such a conveyance would be to make the beneficiaries the parties of the first part as vendors, and the trustee (T) the party of the second part, as trustee, the party of the third part being T, as purchaser. The conveyance would then recite the absolute title in equity of the vendors, and the sale by them to the purchaser; its operative clause would be to the effect that T, as trustee, by the direction of the vendors, conveys and the vendors, as beneficial owners, convey and confirm the property to T. Such a form demonstrates that the legal estate of the trustee is substantially bare. If T were one of two trustees, the matter would be even clearer. In those circumstances an application to the court would be a waste of money.

The problem arises in quite another form if one is advising a subsequent purchaser. Here one is bound to insist on the deduction of a good title, the steps to secure which have not always been taken by the vendor or his predecessor. And if such steps are once omitted, there is no way to put matters right except to secure a release from such of the beneficiaries who could avoid the conveyance, each being *sui juris*. It would be unusual for such a release to be procurable. Moreover, one must be on guard lest an earlier transaction is actually, though not at first sight, struck at by the rule. Thus, the purchaser's advisers should inquire closely into a sale to the wife of a trustee. It is not enough for the conveyance to her to recite, as I have seen done, that the premises were knocked down to her as the highest bidder at a sale by public auction. The rule applies to sales by public auction as much as to those by private treaty. The question is whether the trustee's wife purchased as his agent, a question of fact which may necessitate such embarrassing inquiries as whether she has any money of her own. If it is shown that she was bidding on her own account, the conveyance to her would not be voidable as a matter of course, but there would still be the need for careful scrutiny to see that the transaction was fair. The late Sir Arthur Underhill seems to have thought that the sale by a trustee to his wife or child stands on the same footing as a sale to himself (see "Underhill on Trusts," 9th ed., p. 354). But he cited no authority for the proposition, and I have found none. The view stated above is, I think, consistent with principle.

The question may arise whether the rule here discussed applies to a person who is a trustee only for the purposes of the Settled Land Act. Again, there is no authority, but my opinion is that it does not. The mischief at which the rule aims is that the trustee-vendor should sell to himself. But a Settled Land Act trustee does not. The tenant for life has the legal estate and he alone has the statutory powers to sell and to convey. The Settled Land Act trustee has no function at all except to receive, and give a receipt for, the purchase money. He has no part in the negotiations and no voice either as to the adequacy of the price or whether there should be a sale at all. On the other hand, a Settled Land Act trustee may have had a position bringing him within the rule. Thus, where the settlement was created by a fairly recent will he may well have been the testator's executor; or, in case of a continuing settlement, he may have been a special executor of the last tenant for life. In either case, he will have had the legal estate in an effective sense. Consequently, the rule will preclude him from purchasing, as an ex-trustee, unless he ceased to have the legal estate a substantial while ago. That time can cure the disability of an ex-trustee is shown by *Re Boles and the British Land Company* [1902] 1 Ch. 244, where the period of dissociation was twelve years. But a sale coming very shortly after the end of the purchaser's active trusteeship calls for inquiry whether that trusteeship may have been terminated with the sale in view. In that event, the sale will be voidable, since equity will not allow devices for the evasion of its rules.

LANDLORD AND TENANT NOTEBOOK

"ACCEPTANCE" OF INVALID NOTICES

"A BAD notice to quit cannot be cured" is one of those statements which are terse but apt to mislead. The recent decision in *Re Swanson's Agreement; Hill* v. *Swanson* (1946), 62 T.L.R. 719, applying that in *Farrow* v. *Orttewell* [1933] Ch. 480 (C.A.), shows that the older authorities on which the statement is based merit careful consideration, and that stretching is to be deprecated.

The facts of the older authorities are, indeed, often striking, showing how the recipient of an invalid notice may be able to mislead its giver and then disillusion him. The decisions in *Johnstone* v. *Hudlestone* (1825), 4 B. & C. 922, and *Doe d. Huddlestone* v. *Johnston* (1825), M'Cle. & Yo. 141, resulted from the giving by a tenant of less than the requisite six months' notice and agreeing with the landlord's agent, verbally, to quit on the quarter day named, after which an auction was held for the re-letting of the premises at which the giver of the notice bid (unsuccessfully). He then turned round and claimed that he was still tenant, and in the one action (replevin proceedings) he successfully negatived a right to double rent, in the other successfully resisted a claim for possession of the demised property. Then, in *Doe d. Murrell* v. *Milward* (1838), 3 M. & W. 328, a tenant gave the right length of notice for the wrong quarter day, the landlord raising no objection; during its currency he gave a new and valid notice; it was sought to distinguish *Johnstone* v. *Hudlestone* in that the notice was in writing, but it was held that there could be no surrender *in futuro*. In *Bessell* v. *Landsberg* (1845), 7 Q.B. 638, it was the giver of the notice (a "short" one given by a tenant) who suffered despite the vacillations of the recipient, who first acquiesced, then said he refused it, next (the tenant having quitted in accordance with it) entered and did repairs, and finally won his action for use and occupation.

But before discussing the two modern cases it should be mentioned that in those just referred to the argument usually and unsuccessfully relied upon was that there had been a surrender by operation of law. This failed either because there was not enough to justify the necessary inference or because the alleged surrender was "*in futuro*."

There are other older authorities in which a tenancy has been held to have been determined though at least one of the facts relied upon was an invalid notice to quit. In *Shirley* v. *Newman* (1795), 1 Esp. 265 (not very satisfactorily reported), a landlord who expressed neither assent nor dissent to a short notice was held to have acquiesced and to have "waived" the regular notice by agreement, and failed to recover for use and occupation after the quitting. In *Johnstone* v. *Hudlestone*, *supra*, it was pointed out (*a*) that the Statute of Frauds point was not taken, and (*b*) the tenant had quitted; and in *Bessell* v. *Landsberg*, *supra*, by Patteson, J., that on more recent authorities a surrender could not result from conduct unless some act had been done which took effect *as an estoppel*. In *Brown* v. *Burtinshaw* (1826), 7 Dow. & Ry. K.B. 603, it was said that the landlord served an invalid notice; the tenant took the point, but offered to give up the key; it was held that the tenancy did not determine at the expiration of the notice, the offer of the key not constituting acquiescence—but if there had been acquiescence, it was said, then there would have been an end to the tenancy. And in *Aldenburgh* v. *Peaple* (1834), 6 C. & P. 212, it was said that a short notice given by a tenant in writing may be treated by the landlord, at his option, as a surrender. In *Doe d. Murrell* v. *Milward*, *supra*, this authority was held to have been "much shaken" by *Weddall* v. *Capes* (1836), 1 M. & W. 50.

Little or nothing was said about estoppel in the older cases. Argument was apt to centre round the question of sufficient note or memorandum to satisfy the Statute of Frauds, and the impossibility of surrender *in futuro* (having regard to the possibility of assignment of reversion or term). But *Farrow* v. *Orttewell*, *supra*, showed what the doctrine of estoppel, or rule of evidence known as estoppel, could do.

In this case the notice to quit was not bad because of any defect in form or period, but because it was given by a purchaser who had not completed. The premises were a farm. The tenant, plaintiff in the action (who sought compensation), was found to have believed that it was a valid notice and to have *continued* in that belief until after it had expired, and in this belief he had quitted the premises, had agreed to take another farm, sold some cottages, bought a blacksmith's shop, etc. In these circumstances the court held that it was not open to the defendant to deny the validity of the notice to quit. He had to his knowledge caused the plaintiff to act upon it and treat it as valid.

In the recent case, *Re Swanson's Agreement*, there was a question of shortness of notice. The facts were out of the ordinary, coming before the court as the result of a summons to determine whether the mere fact that a proposed assignee would develop into a statutory tenant would justify the withholding of consent; it was held or said that it would not, Evershed, J., declining to act on the criticism of *Houlder Bros. & Co.* v. *Gibbs* [1925] Ch. 575 (C.A.), made in the course of *Tredegar* (*Lord*) v. *Harwood* [1929] A.C. 72 (see 90 SOL. J. 498). But quite a different problem was found to confront the plaintiff who, perhaps to her surprise, found that she was and had for some time been a statutory and not a contractual tenant, and therefore could not assign at all.

This came about in the following way. In 1942 she took a tenancy for two years from 1st June of that year, determinable by three months' notice expiring on 31st May, 1944, or some subsequent quarter day. The premises were a dwelling-house and the rent was less than the amount of the standard rent. On 22nd February, 1944, the landlord wrote her saying that as from 1st April the rent would be the standard rent. She replied on the 28th February stating that the tenancy *expired* on 31st May. This letter (which was lost) would, the learned judge pointed out, have been received on 29th February, so that there was still time to give the requisite notice. But it was on 7th March that the defendant replied, apologising for the mistake, and asking the plaintiff to regard the first letter as intimating an increase from 1st June. No answer was sent.

After 1st June, however, and for the next two years, the plaintiff paid and the defendant accepted the increased rent; and indeed, when the application for consent to the proposed assignment was first made, the defendant's solicitors, being ignorant of the past, sent the plaintiff a "notice to quit."

On these facts, Evershed, J., held, first, that there had been no surrender of the original term because possession was not given up. But the tenant had read the 22nd February, 1944, letter as indicating that the landlord intended to exercise the rights she (the landlord) then had of putting an end to the contract; the tenant had not answered the letter of 7th March; she had paid the standard rent without comment; and any reasonable man would take her to be representing that the original document of 22nd February would be acted upon by her as though "1st June" had been inserted in it. *Doe d. Murrell* v. *Milward*, *supra*, was distinguishable in that in that case the notice-giving tenant had discovered his mistake *and* given a new notice; and the case was fought on the question of surrender. In the present case Evershed, J., emphasised that he was applying the law of estoppel: "the tenant cannot now be heard to say as against the landlord that there was no valid notice" and "what is involved is the *law of evidence*." While many of the older authorities are not easy to reconcile, I think that this decision, if it stands, will point the way to the solution of some difficulties of the nature discussed.

The Midland Bank Executor and Trustee Company, which is an affiliate of the Midland Bank, announces the opening of a new branch at 13, Parliament Street, York, under the management of Mr. J. Norris.

TO-DAY AND YESTERDAY

April 28.—On 28th April, 1675, John Rant was called to the Bench at Gray's Inn and was directed to show cause why he should not hold a reading. He was subsequently fined £50 for declining. On the same day Sir Robert Baldock and Thomas Raymond were granted voices at the pension meetings. Both subsequently became judges of the King's Bench. The latter was the father of Chief Justice Raymond.

April 29.—On 29th April, 1587, "Sir Christopher Hatton, Knight, Captain of the Guard, Vice-Chamberlain and one of Her Majesty's Privy Council, was made Lord Chancellor of England at Croydon, in the Archbishop of Canterbury's house, where he received the Great Seal in the gallery there." He was a courtier and not a man of law and his promotion aroused some surprise, but he worked intelligently and carefully to acquaint himself with the rules of the Court of Chancery, and his decisions appear to have been marked by wisdom and impartiality. He died in 1591 and was buried in St. Paul's Cathedral.

April 30.—Long before Dr. Guillotin invented his decapitation machine in France there was a similar engine at Halifax, used in connection with the special local jurisdiction for dealing with felons within the Forest of Hardwick. It seems to have been last used on 30th April, 1650, when Abraham Wilkinson and Anthony Mitchell were executed.

May 1.—On 1st May, 1725, the Gray's Inn Benchers ordered Lord Chief Justice Raymond's coat of arms to be put in one of the halls. A committee was appointed to inspect the library and report their opinions as to its improvement. The Steward was ordered to attend the members who had been called to the Bench but had not accepted their call and to give them notice that they must show cause why they did not do so; otherwise they would be fined and proceeded against "according to the ancient rules and orders of this society."

May 2.—On 2nd May, 1749, the Gray's Inn Benchers appointed a committee to treat with the proprietors of the chambers at No. 4 Holborn Court, for the purchase of their interests and also to treat for the demolition and reconstruction of the building and the pulling down of the houses lately purchased by the Society behind No. 4, in Bishop's Head Court. On the same day it was ordered that Adams, the Under-Steward, should in future keep the accounts and be paid £25 a year by the Steward, John Beaver, for his pains. Service was long in the Inn. In 1749 Beaver had served it for sixty-four years in different capacities. Adams, who succeeded him as Steward in 1752, retained the office till 1781.

May 3.—In 1780 several Acts of Parliament were passed concerning the militia; one relating to the obligation of militia officers to furnish descriptions of their qualifications for holding their commissions, another to provide for defraying the charge of paying and clothing the militia, and another for augmenting the militia. On 3rd May, 1780, the Gray's Inn Benchers appointed a committee "to consider of the Militia laws" and report. There is extant a copy of the "Rules and Orders to be observed by the Gentlemen, Members and Inhabitants of Gray's Inn Associated for the Purpose of Learning Military Discipline," dated June, 1780.

May 4.—On 4th May, 1785, the Gray's Inn Benchers ordered that Samuel Romilly's term in his chamber "one pair left at No. 6 Coney Court" be renewed. He had been there just six years and stayed another six, when he moved to No. 2 New Square, Lincoln's Inn. In December, 1780, he wrote: "The moment the sun peeps out I am in the country. A cold country it is for having only one row of houses between me and Hampstead and Highgate, a north-west wind blows full against my chambers."

Bar Strikes in Ireland

"I do not know whether you have ever heard of a strike. They are very fashionable just now. Policemen strike, curates strike, organ grinders strike. In fact all people that on earth do dwell strike, excepting of course, lawyers, who know better and act according." When was that written? In 1872 by Sir Frank Lockwood. As a matter of fact lawyers have struck and do strike. There is recent news of a Bar strike in Ireland. The judge in the Circuit Court at Naas, County Kildare, having ordered the removal of a barrister appearing there, the Council of the Bar of Ireland resolved that no counsel should appear before him until he made an apology in open court. Accordingly, the cases at Trim Circuit Court and at Meath Criminal Sessions had to be adjourned. The matter was eventually satisfactorily adjusted. This rather special relationship of Bench and Bar is by no means a new thing in Ireland and the best judges have known how to accept it gracefully. Mr. Justice Dodd at Cork once used words grossly offensive to a junior barrister, and the Munster Circuit at once passed a resolution that unless he apologised in open court at the close of the mid-day adjournment no counsel would be prepared to appear before him. Dodd, who, as Maurice Healy wrote, "needed no compulsion to set right a wrong once it was pointed out to him," made full amends in a crowded court. Some years earlier Mr. Justice Keogh had similarly offended against Peter O'Brien, afterwards Chief Justice, and directed that all the doors should be kept open that the court might be as crowded as possible when he made his apology. Healy himself once received a public apology in like circumstances from Chief Baron Palles, at the Kerry Assizes. In remoter history, after Lord Clonmell, who became Chief Justice of the King's Bench in Ireland in 1784, had been guilty of great rudeness to a barrister, the Bar resolved that until the Chief Justice publicly apologised no barrister would hold a brief or appear in the King's Bench or sign any pleadings. Clonmell published an ample apology in the press, ante-dating it so that it should seem a voluntary gesture. The Irish Bar have taken collective action on other grounds, too. When Ignatius O'Brien and Stephen Roman were obstructing the business of the Court of Appeal, in which they sat, by their interruptions and their garrulity, deputations more than once approached them with the warning that the day was fast drawing near when counsel would refuse to practise before them. The resulting improvement would last about a week.

Scottish and English Precedents

It is not the Irish alone who have used the strike weapon in their relationship with the Bench. In Scotland, on 10th November, 1670, there began the famous secession of the advocates. A commission had made various regulations for the conduct of judicial business and one of them regulating the fees of advocates precipitated a strike of almost the whole profession. It broke down, however, owing to lack of unity on the part of the malcontents. When Francis North, afterwards Lord Keeper Guilford, was Chief Justice of the Common Pleas in the time of Charles II he came into collision with the serjeants for allowing his brother Roger to make certain motions in that court, despite their monopoly of right of audience. In protest they organised a "dumb day," when they refused to bring forward any business, but North adjourned till the following day, threatening that he would hear common barristers, attorneys or the suitors themselves. In the afternoon they humbly submitted and next morning they received a public reprimand from North and the other judges.

THE SOLICITORS' LAW STATIONERY SOCIETY, LTD.

The report of the Directors of The Solicitors' Law Stationery Society, Ltd., for the year 1946 states that the sales were almost double those of 1945 and were substantially higher than in any previous year. The profit for the year amounted to £94,973, against £31,361 in 1945, and the Directors recommend that a dividend of 15 per cent. per annum, less income tax, be paid in respect of the year. A bonus will be payable to the staff under the profit-sharing scheme. They also recommend the provision of £40,000 for future taxation, the addition of £2,500 to the Women's Pension Reserve, the placing of £20,000 to a Rebuilding Reserve, and the carrying forward of the sum of £16,387, against £14,377 brought forward from the previous year.

The annual meeting will be held at 88–90, Chancery Lane, W.C. 2 (First Floor), on Tuesday, 6th May, at 12.30 o'clock. A report of the proceedings at the meeting will appear in our issue of the 10th May.

The Minister of National Insurance has appointed a committee, under the chairmanship of Judge E. T. Dale, to review the policy adopted in scheduling industrial diseases under the Workmen's Compensation Acts and to advise on the selection of diseases for insurance under the National Insurance (Industrial Injuries) Act.

A number of additional local authority areas have been included in the areas of rent tribunals as follows: *Cheltenham*, Stroud; *Exeter*, rural district of Tiverton; *Bath*, Westbury; *Coventry*, Bedworth; *Folkestone*, Canterbury; *Bournemouth*, Lymington; *Kingston-upon-Thames*, Walton and Weybridge; *Newcastle*, Tynemouth, Longbenton, Gosforth; *St. Austell*, rural district of Wadebridge; *Gateshead*, Tow Law; *York*, rural district of Norton; *Bedford*, rural district of Biggleswade; *Colchester*, rural district of Chelmsford; *Portsmouth*, rural district of Petersfield; *Leeds*, Otley; *Stockport*, Crewe; *Bradford*, rural district of Skipton; *Slough*, rural district of Windsor.

COUNTY COURT LETTER

Removal of Fences

IN *Holloway* v. *MacGilchrist*, at Oakham County Court, the claim was for damages for trespass and an injunction. The plaintiff's case was that he and the defendant owned adjoining cottages, and the back gardens were separated by a corrugated iron fence. In spite of a warning letter from the plaintiff, the defendant employed some men to remove the fence, and raspberry canes were trampled down. The defendant's three dogs also overran the plaintiff's garden. The defendant's case was that, having bought the property, he thought the fence was his. Having discovered the doubt on the question of ownership of the fence, the defendant was willing to restore it. The plaintiff, however, insisted on proceeding with the case. His Honour Judge Field, K.C., gave judgment for the plaintiff for £15 and costs, the defendant undertaking to restore the fence within seven days. No injunction was granted.

Soldier's Remittances to Wife

IN *Modd* v. *Modd*, at Grantham County Court, the claim was for £50 as money had and received to the use of the plaintiff. The case for the plaintiff was that in July, 1945, he was in the Far East and had an Army credit of £70. On the 14th July, he sent to his wife (the defendant) £50, with a letter saying that if she was in need of money she was to use it, otherwise to put it by for a rainy day. She was also in receipt of the ordinary marriage allowance. In October, 1945, the plaintiff returned home, but the defendant refused to rejoin him and was associating with another man. The money was therefore claimed as a voluntary payment under a mistake of fact. The defendant's case was that her married life was unhappy, and she and the plaintiff had separated before he went overseas. She denied associating with another man. The money had been spent on clothes for the child of the marriage, and extras during illness. A resumption of her married life would not have been a success. In a reserved judgment, His Honour Judge Shove accepted the wife's version. The money was not paid under a mistake, and judgment was given for the defendant, with costs.

The Quality of Wheat

IN *Thorpe* v. *Bell & Sons*, at Brigg County Court, the claim was for £5 as the balance of the price of wheat. The counter-claim was for £2 10s. as the price of goods sold. The case for the plaintiff was that he was a farmer, and had sold wheat to the defendants, a firm of millers. On the alleged ground that the wheat was only potentially millable and contained 22 per cent. moisture, the defendants had wrongly deducted £5 from the amount paid. A preliminary objection was taken that the court had no jurisdiction, as the dispute was one for the Wheat Committee to settle. His Honour Judge Shove overruled the objection. The committee had not exclusive jurisdiction in cases arising out of sales of wheat. The wheat in question became the property of the defendants when their agent was told (two days after the contract was made) that the wheat was in a deliverable state and sheeted down. It then remained on the farm, and, if the defendants claimed that the wheat had got wet, they should have claimed damages. There was no evidence that the plaintiff, as bailee, had been negligent. Judgment was given for the plaintiff on the claim, with costs. Leave to appeal was refused. On the admitted counter-claim, judgment was given for the defendants.

The Definition of a Farm Worker

IN *Shaw* v. *Vaughan*, at Trowbridge County Court, the claim was for possession of a cottage, and the counter-claim was for £19 10s., as arrears of wages. The claim was admitted, and the evidence on the counter-claim was that the defendant (aged sixty in 1939) had in that year entered the employment of the plaintiff as an estate handyman. His wages began at £2 a week, with the cottage rent-free. His work was to repair hedges, look after the water pump, cut timber, etc. When the minimum wage of agricultural workers rose to £2 8s., the plaintiff paid the defendant the increase. Subsequent increases raised his wages to £3 5s. a week, but he had not received the latest increases. The plaintiff's case was that the defendant was employed on the pleasure grounds of the estate, no part of which had been commercialised. The plaintiff had not realised that the increases of wages (asked for by the defendant) corresponded with the increases to scheduled agricultural workers. The defendant was not in any category entitling him, as of right, to the increase claimed. His Honour Judge Kirkhouse Jenkins, K.C., made an order for possession and gave judgment on the counter-claim for the plaintiff, who did not ask for costs.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Contract for sale of land—RESCISSION

Q. Will you please refer me to any cases relevant to the Law Society's Conditions of Sale (1934), cl. 10, or to the National Conditions of Sale (1935), cl. 4 (3), both of which deal with the vendor's right to rescind a contract? In a contract incorporating the National Conditions of Sale (1935), the following clause occurs: "Application to the lessor for a licence to use the property as a private hotel (instead of merely as a private dwelling-house) having been made by the vendor to which he has received satisfactory verbal consent the vendor shall obtain a written licence accordingly but the purchaser shall not call for the lessor's title to grant such licence nor raise any objection or requisition in regard thereto." The vendor now finds that he can only get the expected licence by agreeing to an additional ground rent of £2 per annum. The purchaser would have no objection to this because he would claim an appropriate abatement in the purchase price, but naturally the vendor objects to paying any such compensation and threatens to rescind the contract under cl. 4 (3). The purchaser says that the clause does not apply, for it deals with requisitions and the agreement referred to would have to be carried without any requisition being made about it. Does cl. 4 (3) enable the vendor to evade his undertaking?

A. We think the vendor can rescind. He apparently entered into the contract on the understanding that he could readily obtain the necessary relaxation of the restriction. This has proved not to be so. Our subscriber will find the law discussed in footnote (*f*), on p. 89, of T. Cyprian Williams' "The Contract of the Sale of Land," many cases being cited. We quote the following from this footnote: "These authorities show that a vendor who has by an innocent error contracted to sell more (either in quantity, title or estate) than he is entitled to convey, may well rescind the contract under a condition of this kind." Recent cases on the subject are *Re Jackson & Haden's Contract* [1906] 1 Ch. 412 and *Merrett* v. *Schuster* [1920] 2 Ch. 240.

Change of Name

Q. A married woman who was married two years and seven months ago and whose husband left her soon after their marriage and was not a desirable character is now told he is divorcing her next May (the end of the three years from the date of the marriage). She is expecting a child by another man at the end of January and wishes to know if she can change her name by deed poll so that the child will have the name of its real father, whom she hopes to marry after the divorce, and also so that all ration books at the food office will be in the new name, which they say cannot be done unless she shows a deed evidencing the change of name. (1) Can this be done by a deed poll now, before the child is born? (2) Is it really necessary to have the deed poll enrolled, and, if so, can this be done without the husband's consent? (3) I presume it is not necessary to advertise the change of name, as she thinks this is only a matter for herself and the future child. (4) Does the pending divorce affect the proposed change of name?

A. (1) We think there is nothing to prevent the execution of a deed poll at any time. If the deed is executed after the birth, however, though the child's name can still be changed by deed poll executed on his behalf by the parent or guardian, the birth certificate cannot be altered. (2) There is no rule of law regarding the enrolment of such deeds as a condition of their effectiveness to change the name, but it should be ascertained from the National Registration Office and the Food Office whether a deed which has not been enrolled will be accepted as sufficient evidence by them. If the deed is enrolled the husband's consent is necessary, unless dispensed with by the practice master. This discretion to waive the husband's consent is very rarely exercised and never, we understand, where it is suspected that the applicant has formed an adulterous association. It is conceivable that a statutory declaration evidencing the change would be accepted in lieu of a deed poll for national registration and rationing purposes, and in this case the husband's consent would not be required. (3) If the deed poll is enrolled it will be necessary to advertise the change of name in the *London Gazette*, but a change of name otherwise than by duly enrolled deed poll need no longer be advertised since the revocation of Defence Regulation 20 (2)–(4). (4) No. But the change of name would appear in the title of the suit and might be evidence in the divorce proceedings.

THE EDUCATION OF THE LAWYER

(CONTRIBUTED)

THESE notes are put together by one whose impressions of student days are still sufficiently vivid to afford material for reflection on the urgent problem presented by the professional education of the articled clerk. The writer accordingly offers certain suggestions for consideration and, if they savour somewhat of novelty, it is submitted that present-day conditions demand that we revise our view as to what constitutes a minimum of basic legal education; in short, it is claimed that the existing scheme is obsolete and consequently fails to give the best results.

The first and obvious consideration is the length of the term of articles which must be served. It seems difficult to justify retaining the five-year period, although it is believed that the number of clerks who in fact serve this full period is comparatively small by reason of the exemptions afforded by the holding of a higher school certificate or the passing of other examinations of this calibre. It is submitted that the five-year period is excessively long and should be abolished in favour of a four-year apprenticeship for all except those already possessing a university degree. It will scarcely be contended that any young man or woman of normal intelligence is not fully equipped to face his final examination after four well-served years of office experience.

It is further suggested that The Law Society should formally rule that no person under the age of eighteen years should be permitted to enter into articles. One does occasionally encounter youths of tender years in solicitors' offices who would be much more fittingly employed under the jurisdiction of the schoolmaster. It is to be hoped that a ban on this type of infant prodigy will be rigidly imposed, although the Draconian calls of National Service should go far to remedy this state of things for the present.

The matter of the principal also calls for consideration, and the Society might well take the view that only those solicitors whose practice is of a general nature should be eligible to take pupils. This would automatically rule out service of articles with local government officers, clerks to justices, etc. There can be no question but that articles served in private offices provide a far better background for the beginner than any amount of tutelage in specialised service. It is suggested that the proper procedure to be observed in the case of those wishing to enter local government and allied services would consist in three years articles with a private office followed by one final year with an approved local authority.

The next topic is that of examinations, beginning with the preliminary, to which no exception can be taken on principle. It is, however, felt that a personal interview should constitute an essential element in this test, so that the Society may have some opportunity other than that provided by written papers of controlling the flow of recruits for the profession. It is noteworthy that this idea is coming more and more to the fore of late and has now become the most important factor of the examinations for entry into the foreign and home civil service.

The subject of the intermediate is one that calls for discussion. Has it any real value in its present form? The writer believes that it has not and should be either radically changed or totally abolished. If the examination is to be retained its value would be greatly enhanced were it cut neatly into two parts. Part I, which would have to be taken after one year of service of articles, would consist of half of the subjects now prescribed for the whole examination, with the very important addition of legal history. The present syllabus of legal education allows a student to go through his career with no more than the meanest acquaintanceship with the historical and social background of his work. While a knowledge of the eighteenth century Court of Chancery may not make him a visibly better draftsman, it does at least lift him out of the class of mere conveyancing hacks and marks him as a person of some education, and not just a competent technical executive. And the law should surely seek to turn out its members as men of education in preference to technicians.

Part II of the intermediate would deal with the residue of those subjects not so far covered, and would be taken at the end of the second year. The obvious advantage of this system is that it enables the student to attack his objects in detail instead of trying to digest an amorphous and unpalatable mass of information as he must under the present arrangement.

On the other hand, if the intermediate is to go what are we to put in its place? If we cannot have an examination based approximately on the plan suggested above the simplest course is to make it obligatory for all four-year students to have gained a university degree before applying for admission to the final examination. Facilities for obtaining a degree while serving articles are a commonplace already. This course enjoys the advantage of simplicity. Few will gainsay the desirability of every would-be solicitor possessing a university degree before he is admitted.

Lastly, we come to the final examination, and this is, in its turn, due for overhaul. The reintroduction of the honours examination resurrects a topic which has been the centre of controversy for many years past. Surely the mere existence of any such additional test is in itself an admission that the pass papers are inadequate? It is believed that this situation could easily be remedied by a rearrangement of the syllabus so as to unify these two separate tests. Divorce and Private International Law should be obligatory for all candidates—how extraordinary to reflect that it is possible to become a solicitor without knowing the first thing about the law of divorce! Further, the papers on local government would be additional and optional for students with experience and ambitions in these directions, but would not be in lieu of the Divorce and Private International Law paper.

And why is there no proper test of drafting in the final? Any student equipped with a good memory can get round the books on conveyancing and real property, but this does not mean that he can draft with skill. So why not an extra paper on this difficult art alone?

The writer would go one step further to add to the candidate's worries in suggesting the addition of a general paper where matters of general interest could be discussed in the shape of short essays, such a paper to be regarded as an integral part of the whole examination in that it affords the examiner a chance of assessing the student's all-round mental capacity.

On an examination so constituted the award of "classes" as given at universities would be possible and desirable.

No doubt the ideas put forward in this article are open to challenge in certain respects. The object of the writer in ventilating the subject is to suggest to members of the profession where, in his view, improvements could be achieved; the matter is one of more than mere theoretical interest, and it is to be hoped that the day is not too distant when some at least of these considerations will be translated into practical action by those entrusted with the education of the articled clerk.

REVIEWS

Dilapidation Practice. By C. A. MARTIN FRENCH, F.S.I., F.A.I. With a foreword by The Rt. Hon. THE LORD MESTON. 1947. London: The Estates Gazette. 52s. 6d. net.

This book is very welcome. If, as the title suggests, the author's main object is to give practical advice, he is fully aware of the fact that legal principles must govern the conduct of those to whom it is offered, and the first 297 of 667 pages are concerned with statements of the law. The nature, scope, and construction of covenants, and the law relating to fixtures, naturally take up a good deal of space, as does discussion of statutory provisions affecting enforcement (L.T.A., 1927, ss. 18, 19; L.P.A., 1925, s. 146; Leasehold Property (Repairs) Act, 1938). This part also contains useful chapters on party walls and dangerous structures, on emergency legislation (the Landlord and Tenant (War Damage) Acts, 1939 and 1941, the effect of building restrictions orders), on ecclesiastical dilapidations, and on the difficult subject of agricultural dilapidations.

Part I not only freely refers to decisions and enactments, but also, in a number of cases, gives us full reports of the former and the full text of the latter. It is interesting to note that the Royal Institute of British Architects suggested a definition of "dilapidations" in 1844; but we believe the courts of law have never made the attempt. As to "repair," we have *Lurcott* v. *Wakely and Wheeler* [1911] 1 K.B. 905 (C.A.), the report of which is reproduced and which is referred to *passim*; but it is a pity that *Bishop* v. *Consolidated London Properties, Ltd.* (1933), 102 L.J.K.B. 257, is not mentioned in this connection. Likewise, the author's observations on fire insurance (pp. 58, 59) might well have included a statement of the effect of the Fire Prevention (Metropolis) Act, 1774, s. 83.

In Pt. II the author deals with Practice, and readers will find not only a vast amount of useful information (the "Dictionary of Technical Words frequently used in the Preparation of Dilapidation Schedules" will be particularly useful to lawyers), but also much sound advice. The latter is offered primarily to surveyors engaged in preparing schedules and in giving evidence, and, as is to be expected, moderation is recommended. If the author had desired to invoke authority in connection with this advice, reference might have been made to *Gutteridge* v. *Munyard* (1834), 1 Moo. & R. 334, and to *Perry* v. *Chotzner* (1893), 9 T.L.R. 488.

Part III is concerned with the Compensation (Defence) Act, 1939, and the Requisitioned Land and War Works Act, 1945, as well as the Landlord and Tenant (Requisitioned Land) Act, 1942, and other statutes, and discusses the many problems which arise on "derequisition" with admirable lucidity. The explanations given by, say, the Attorney-General and the Financial Secretary to the Treasury of some of the provisions may not bind courts of law, but they and the illustrations given by the author are valuable aids to our understanding.

The National Insurance (Industrial Injuries) Act, 1946. By N. P. SHANNON, of Gray's Inn, and DOUGLAS POTTER, M.A., of the Inner Temple, Barristers-at-Law. 1946. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

This Act will come into operation on the appointed day, and will replace (by means of an insurance scheme in respect of industrial injuries) the existing remedies against their employers conferred upon workmen by the Workmen's Compensation Acts. This volume contains a comprehensive general introduction to the Act, and describes in detail the new system of insurance against industrial injuries. Even after the appointed day, the existing Workmen's Compensation Acts will retain their importance, as they will still apply to accidents occurring beforehand. The present work and "Willis's Workmen's Compensation Act" must, therefore, be regarded as complementary to each other. This volume is accordingly properly described as being in the category of books indispensable to the practitioner.

MR. J. M. LIGHTWOOD

With the death of John Mason Lightwood on the 4th April, Lincoln's Inn lost, at the age of ninety-four, its senior practising member, and one who for considerably more than half a century had exercised an unusual influence over the study and practice of the law.

The son of a Wesleyan Minister, Lightwood was admitted a student at Lincoln's Inn in January, 1875, being already a Fellow of Trinity Hall, and was called to the Bar by that Inn in May, 1879. Shortly after his call he began to show a special flair for the literary side of the law and within ten years had become the author of at least one well-received original work and a regular contributor on conveyancing subjects to the legal papers, including this journal. In due course he became assistant to the then editor of this journal, the late W. M. Fawcett, the second edition of whose work on Landlord and Tenant he also undertook. On the death of Fawcett in July, 1912, Lightwood succeeded to the editorship, which he held until 1925, when he resigned and became editor of the *Law Journal*. In addition to the work on Landlord and Tenant above mentioned, he followed the late Sir Arthur Underhill in editing Fisher on Mortgages, the latest edition appearing under the title "Fisher and Lightwood," and—though his name appears as a joint editor—was virtually sole editor of the fourth edition of Williams on Vendor and Purchaser. His contributions to Halsbury and other works of an encyclopædic character are too numerous to set out here, but he will probably be best remembered for the articles which appeared under his initials "J. M. L." as "A Conveyancer's Letter" in the *Law Journal* for upwards of twenty years with hardly a break. At his death he was senior Conveyancing Counsel to the Court.

ESTATE DUTY OFFICE

MOVE TO LONDON AREA

(1) Communications for the Controller, Estate Duty Office, Inland Revenue, should not be sent to St. George's Hotel, Llandudno, after Wednesday, 30th April, 1947. Letters and accounts for assessment should be sent after that date to the Controller, Estate Duty Office, Inland Revenue, Rayners Lane, Harrow, Middlesex, where the main office will open on Tuesday, 6th May.

(2) Inland Revenue affidavits to lead to grants of representation, if accompanied by remittances, should be sent for assessment and stamping to the Accountant-General (Cashier), Inland Revenue, New Wing, Somerset House, London, W.C.2, after the 30th April, or they may be lodged there in Room 25 on or after Monday, 5th May.

If, however, for any reason they are not accompanied by remittances, they should be forwarded after the 30th April to the Estate Duty Office (Affidavit Branch), Inland Revenue, New Wing, Somerset House, London, W.C.2, or they may be lodged there in Room 16 as from the 5th May.

(3) All remittances for death duties should be sent after the 30th April to the Accountant-General (Cashier) as above, or may be paid personally in Room 25 as from the 5th May.

NOTES OF CASES

COURT OF APPEAL

Roberts *v.* **Dorothea Slate Quarries Co., Ltd. (No. 1)**

Scott, Morton and Bucknill, L.JJ.

7th February, 1947

Master and servant—Workmen's compensation—Inhalation of silica dust—Silicosis—"Injury by accident"—Workmen's Compensation Act, 1925 (15 & 16 *Geo.* 5, *c.* 84), *s.* 1 (1).

Appeal from a decision of Judge Evans given at Caernarvon County Court.

The appellant workman was employed from 6th April, 1921, by the respondent employers as a slate splitter, which work brought him into contact with slate dust and silica particles. These he inhaled, with resulting injury to the lungs, culminating in silicosis, from which he was totally incapacitated from 2nd May, 1942. The work in which the workman was engaged with the slate gave rise to a considerable amount of dust. It was agreed between the parties that the workman was permanently incapacitated from silicosis and that the disease had been caused by the inhalation of small particles of silica which reached the lung, thus causing injuries in the smaller air passages of the lung and certain cells, and producing fibrocis which interfered with the functioning of the lung. The workman applied for compensation on the ground that each time a particle of silica was inhaled and injured his lungs he sustained an injury by accident within the meaning of the Workmen's Compensation Acts. The county court judge decided in favour of the employers on the ground that breathing was a natural process and that what had occurred did not constitute an "accident." The workman appealed.

SCOTT, L.J., said that in his opinion the decision of the appeal, which involved important questions of principle, was not for that court as it was concluded by *Williams* v. *Guest, Keen & Nettlefolds, Ltd.* [1926] 1 K.B. 497, if that decision was binding on the court. It had been argued for the workman that the binding force of that decision had been affected sufficiently to entitle the court, on the principle laid down in *Young* v. *Bristol Aeroplane Company, Ltd.* [1946] A.C. 163, to disregard it. Possibly on an appeal the House of Lords would reconsider that case or *Fitzsimmons* v. *Ford Motor Company, Ltd.* (1946), 39 B.W.C.C. 26, where the court decided a question with some, but not sufficiently, apparent similarity to *Williams* v. *Guest, Keen & Nettlefolds, Ltd., supra,* for the court to regard the earlier decision as open to it to criticise. *Williams* v. *Guest, Keen & Nettlefolds, Ltd., supra,* must be taken as binding on the court at present. It completely covered the present case, and the appeal must be dismissed.

MORTON, L.J., agreeing, said that the evidence particularly referred to as distinguishing *Williams* v. *Guest, Keen and Nettlefolds, Ltd.,* from the present case, was the evidence that the granules of quartz were breathed in by the workman in a very fine state of division and rather angular in shape, and that the smaller particles reached the lungs and caused an injury in their smaller air passages. That evidence did not give rise to any distinction between the two cases. In *Williams'* case the workman was found to be suffering from silicosis caused by his breathing in particles of dust from the silica contained in the rock. Plainly, the point argued in the present case had been before the minds of the court in *Williams* v. *Guest, Keen & Nettlefolds, Ltd., supra.* He (his lordship) did not agree that the court ought not to follow that decision, for in it the court had plainly considered *Selvage* v. *Burrell & Sons* [1922] 1 K.B. 355; 65 SOL. J. 133.

BUCKNILL, L.J., gave judgment agreeing.

COUNSEL: *Beney,* K.C., and *Dare; Gerrard,* K.C., and *F. Atkinson.*

SOLICITORS: *Rhys Roberts & Co.,* for *Elwyn Jones & Co.,* Bangor; *Whitfield, Byrne & Dean,* for *Carter, Vincent & Co.,* Bangor.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Roberts *v.* **Dorothea Slate Quarries Co., Ltd. (No. 2)**

Scott, Morton and Bucknill, L.JJ. 28th February, 1947

Master and servant—Workmen's compensation—Silicosis—Slate worker — Whether within compensation scheme — Various Industries (Silicosis) Scheme, 1931 (*S.R. & O.,* 1931, *No.* 342), *art.* 2.

Appeal from a decision of Judge Evans given at Caernarvon County Court.

The respondent workman was employed by the appellant company from 1921 as a slate splitter, which work brought him into contact with slate dust and silica particles. He was totally

incapacitated by silicosis from the 2nd May, 1942, when he ceased to be employed by the appellant employers. He claimed compensation under the Various Industries (Silicosis) Scheme, 1931. The making of slates takes place partly in pits, where blocks of stone are hewn out of the rock face, and partly in sheds where the blocks are reduced in size and cut into slates. The workman worked in sheds where the processing of slates took place, and not in the employers' pit, but those processes gave rise to considerable dust. Slate contains quartz granules which are in a very fine state of division, angular in shape and about .01 millimetre in section. The county court judge held that the workman was engaged in working with silica rock within the meaning of the Scheme, and accordingly made an award in his favour under it. The employers appealed. By art. 2 of the Scheme of 1931, "This Scheme shall apply to all workmen employed . . . in any of the following processes." Processes (i) to (vii) relate to work in connection with "silica rock." Article 2 (viii) refers separately to Slate mines: "Any operation underground." Article 2 (i) specifies "Mining and quarrying of silica rock" and continues, "For the purposes of this Scheme silica rock means quartz, quartzite, ganister, sandstone, gritstone and chert . . ." Article 2 (iv) specifies "sawing, planing, dressing, shaping, cutting or carving of silica rock," which would include the workman if slate were "silica rock." A geologist gave evidence that the free silica or quartz content of the substances constituting silica rock in the definition in art. 2 (i) was about 90 per cent., but that of slate was some 10–15 per cent.

SCOTT, L.J., said that the county court judge had failed to appreciate the essential point, that he had to decide whether silica rock was proved to be the material which the workman was processing. He had thought that he could disregard the evidence of the geologist and put on the words "silica rock" a meaning of his own. He was wrong in so doing, and the appeal must be allowed.

MORTON, L.J., agreeing, said that he was glad to observe that by S.R. & O., 1946, No. 102, the Scheme of 1931 had been amended by substituting for the words "slate mines, any operation underground," the words "slate mines and quarries, any operation underground; any process in or incidental to the sawing, splitting or dressing of slate," for this was a hard case. It seemed clear, however, that the workman was working on slate and not silica rock; and slate could not be transmuted into silica rock for the purposes of the Scheme merely because there was in the slate a certain amount of free silica or quartz.

BUCKNILL, L.J., gave judgment agreeing.

COUNSEL: *Gerrard*, K.C., and *F. Atkinson*; *Beney*, K.C., and *Dare*.

SOLICITORS: *Whitfield, Byrne & Dean*, for *Carter, Vincent and Co.*, Bangor; *Rhys Roberts & Co.*, for *Elwyn Jones & Co.*, Bangor.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Yeovil Rural District Council and Others *v.* South Somerset and District Electricity Co., Ltd.

Lord Oaksey, Tucker and Cohen, L.JJ.
28th March, 1947

Rating and valuation—Electricity undertaking—Profits basis—Tenant's share of profits—Sum paid as excess profits tax—Whether deductible—Liability to tax—Whether to be considered.

Appeal from a decision of the Divisional Court (62 T.L.R. 389).

The respondents, South Somerset & District Electricity Co., Ltd., occupied for the purposes of their electricity undertaking in the rating area of Yeovil Rural District Council hereditaments which were rated on the profits basis as expounded in *Kingston Union Assessment Committee* v. *Metropolitan Water Board* [1926] A.C. 331. The council, as rating authority, being dissatisfied with the determination by the Yeovil Area Assessment Committee of proposals for the amendment of the valuation list by increasing assessments on the hereditaments, appealed to Somerset Quarter Sessions, which upheld the decision of the assessment committee, subject to a case stated for the opinion of the High Court. In estimating the rateable value of the company's undertaking as a whole, quarter sessions deducted the sum paid by the company by way of excess profits tax in the material year. They left for the opinion of the court the questions whether that deduction was properly made; and whether, if not, the fact that excess profits tax was payable by the company was a factor to be taken into account, among others, by the tribunal of fact; and further, whether any account should be taken of the company's post-war credits. The Divisional Court held themselves bound by *Port of London Authority* v. *Orsett Union Assessment Committee* [1919] 1 K.B. 84, to hold that the sum paid as excess profits tax was deductible. They further held that no account was to be taken of post-war credits. The rating authority and the valuation committee appealed.

LORD OAKSEY, L.J., in a written dissenting judgment, said that the rating authority and the valuation committee relied principally on the dictum of Lord Dunedin in *Port of London Authority* v. *Orsett Union Assessment Committee* [1920] A.C. 273, at p. 299, where he said that sterility in earning profits was one thing and sterility in the disposing of profits another, since the former affected value and the latter did not. They also relied on the fact that since *R.* v. *Southampton Docks Co.* (1851), 14 Q.B. 587, at p. 611, income tax had not been deducted in estimating rateable value. They further contended that the provision in s. 18 of the Finance (No. 2) Act, 1939, that excess profits should for the purposes of income tax be deductible as an expense, was mere machinery for preventing double taxation, and had no bearing on the question at issue. He (his lordship) was of opinion that the Divisional Court in *Port of London Authority* v. *Orsett Union Assessment Committee*, *supra*, and the Court of Session in *Newton-on-Ayr Gas Co., Ltd.* v. *Ayr Assessor* (1923), 175 L.T. 495, were right, as also was the decision now under appeal. It was common ground that the profits basis was to be adopted in rating the company. Having regard to the observations of Lord Cave, L.C., in *Kingston Union Assessment Committee* v. *Metropolitan Water Board*, *supra*, at p. 339, the company, as the actual occupants, must be regarded as possible tenants; and they must be taken as they were, with all the limitations and restrictions which were imposed on them by law and which they could not reasonably be expected to leave out of sight in deciding what rent they would pay. There was no true analogy for the present purpose between income tax and excess profits tax. Income tax fell equally on all more or less, but excess profits tax was based entirely on the profits of a particular taxpayer for the standard year. The observations of Lord Dunedin in *Port of London Authority* v. *Orsett Union Assessment Committee*, *supra*, were not made with reference to the point now at issue, the higher courts expressing no view on the point there decided by the Divisional Court. He (his lordship) further did not think right in principle the view taken by Tucker and Cohen, L.JJ., that, though excess profits tax should not be deducted *in toto*, it might be considered in arriving at the amount of the tenant's profit to be deducted. That view distinguished excess profits tax from income tax.

TUCKER, L.J., in his written judgment, said that in *R.* v. *Southampton Docks Co.*, *supra*, Lord Campbell, C.J., had said that income tax was not a tax on the subject-matter rated, which the tenant as such would be obliged to pay, but a tax on the net income of the tenant after paying the rent of the premises by which his profits were earned. That authority had remained unchallenged for nearly a hundred years. In what respect were those words inapplicable to excess profits tax? In *Port of London Authority* v. *Orsett Union Assessment Committee*, *supra*, the Divisional Court had held that for rating purposes excess profits duty was distinguishable from income tax, but the grounds for that distinction did not clearly appear from the judgments. He (Tucker, L.J.) found it impossible to distinguish between income tax and excess profits tax for the present purpose. He was accordingly of opinion that the decision of the Divisional Court in *Port of London Authority* v. *Orsett Union Assessment Committee*, *supra*, should be overruled and that of the Court of Session in *Newton-on-Ayr Gas Co., Ltd.* v. *Ayr Assessor*, *supra*, not followed. It was, however, further submitted for the company that if excess profits tax were not deductible as a working expense in arriving at the profits, the tribunal of fact might yet give some weight to the existence of the tax as one of the elements to be taken into consideration in fixing the tenant's share of the profits. The present high level of income tax was a not wholly irrelevant factor in the fixing of that share. The appeal would be allowed and the case remitted to quarter sessions with an intimation that they were wrong in holding that excess profits tax was deductible, but that the existence of that tax was a factor which, with others, they were entitled to take into account in arriving at the tenant's share of profits.

COHEN, L.J., in a written judgment, agreed that the appeal should be allowed.

COUNSEL: *Capewell*, K.C., and *Squibb*; *Rowe*, K.C., and *Harold Williams*.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *Harold King*, Taunton; *Evelyn Jones & Co.*, for *Jackson & Sons*, Ringwood.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

In re **James; Lloyds Bank, Ltd.** *v.* **Atkins**

Roxburgh, J. 12th February, 1947

Administration—Order of application of assets—Specific gift subject to payment of debts—Residuary gift—Statutory order of application varied—Administration of Estates Act, 1925 (15 & 16 *Geo.* 5, *c.* 23), *s.* 34 (3), *Sched. I, Pt. II.*

Adjourned summons.

The testator by his will dated 28th February, 1933, devised and bequeathed to the plaintiff bank, who were his executors and trustees, a house, together with any money standing to his credit at the bank: "upon trust as and when the bank shall think fit to sell call in and convert into money the same or such part as shall not consist of money and after payment of my just debts funeral and testamentary expenses to invest the proceeds in trustee securities," and to stand possessed of the net rents, profits and income therefrom upon trust for his wife during her life, and after her death upon trust for his nephews and nieces. He gave the residue of his estate to his wife absolutely. He died in 1943. By this summons the bank asked whether the testator's funeral and testamentary expenses, debts and liabilities were payable primarily out of the property specifically bequeathed subject to their payment or out of the residue.

ROXBURGH, J., said that, apart from authority and as a matter of construction, he would have held that the testator had "specifically appropriated or devised or bequeathed" property for the payment of debts within the meaning of the Administration of Estates Act, 1925, Sched. I, Pt. II, para. 3. Further, he would have held that the direction to pay debts out of a particular fund necessarily involved an intention to exonerate some other fund which the testator had disposed of in some other part of his will; in other words, it necessarily involved an intention to exonerate the residue which he had given to his wife absolutely. Were these conclusions right having regard to the authorities? In *In re Kempthorne* [1930] 1 Ch. 268, Maugham, J., said: "Now in both of those cases it is to be noticed that the Legislature is assuming that the testator by his will has specifically appropriated in one case, or devised or bequeathed in the other, property for the payment of debts; or that he has charged with payment of debts specific property, or some property, under a general description, or devised or bequeathed property subject to a charge for payment of debts, and I cannot help concluding that those two paragraphs mean that the fact that the testator has done one of those things is not *per se* to constitute, to use the words of s. 34 (3), a provision in the will which operates to alter the order of application which is specified in Pt. II of the Schedule." The nephew relied on these words and submitted that they applied to the present case. In his judgment they did not. The words *per se* were of vital importance. In the present case there was to be found not only a devise or bequest of particular property for the payment of debts, but also an intention to exonerate another category of property disposed of by the will, namely, the residue. A view of the authorities showed that this distinction was valid; see *In re Atkinson* [1930] 1 Ch. 47. In *In re Littlewood* [1931] 1 Ch. 443, Maugham, J., had to deal with a will which contained a gift charged with payment of debts and also a residuary gift. He there found that there was not only a direction to pay debts out of the particular fund, but a clear intention to exonerate residue. In *In re Gordon* [1940] Ch. 769, there was a specific gift subject to the payment of debts, but no residuary gift, and Bennett, J., held that the debts were primarily payable out of the undisposed-of property. The distinction between *In re Littlewood, supra,* and *In re Gordon, supra,* was that in *In re Littlewood* there was a residuary gift and in *In re Gordon* there was not. In his judgment the decision in *In re Littlewood* was applicable here, and he would declare that the specifically devised house and the moneys at the bank were the primary fund for the payment of the debts and administration expenses.

COUNSEL: *A. H. Droop; R. Gwyn Rees; J. H. Boraston.*

SOLICITORS: *Vizard, Oldham, Crowder & Cash,* for *Vizard & Son,* Monmouth; *Cunliffe & Airy.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Crawshay; Hore-Ruthven** *v.* **Public Trustee (No. 2)**

Vaisey, J. 13th March, 1947

Power—Fraudulent appointment—Special power exercised in favour of object—Intention to benefit non-objects.

Adjourned summons.

The testator, by his will dated the 24th June, 1877, directed his trustees to hold a sum of £100,000 consols upon trust for his daughter R for life and after her death for her children but, should she have no children, he directed his trustees to hold the trust fund in trust for the children of her brothers and sisters who might be living at her decease as she should by will appoint and, in default of appointment, upon trust to divide the fund equally between all the children of her brothers and sisters living at her decease. The testator gave his residuary estate to his sons. By a codicil the testator provided that if R should marry W, none of her children by W should take any interest under his will. The testator died in 1879. The daughter died in 1943. She had married once only, namely, W. There were two children of that marriage. Vaisey, J., having held in *In re Crawshay* [1946] Ch. 327; 90 SOL. J. 516, that the special power was exercisable, the further question arose whether the daughter had validly exercised the power by her will executed in 1934 in favour of a nephew J, who was an object of the power. The daughter had by a series of testamentary dispositions, the first made in 1907, consistently exercised the power in favour of J. In 1907 one of her brothers, who died in 1918, by his will, devised to J certain property, in effect, upon the condition that he should assign to trustees any share to which he might become entitled in the £100,000 trust fund. After the death of that testator J duly assigned to the trustees any share he might take in the fund. When this assignment was made, J's legal advisers knew that the daughter had by her then will appointed the fund in his favour. On the daughter's death a letter was found among her papers written in 1910 to J, to be given to him after her death, in which she stated that she had made the appointment trusting to his honour that reparation should be made to her own children.

VAISEY, J., said that it was suggested in the summons that, if the appointment were fraudulent, it was by reason of J having before the date of the will assigned any interest he might take upon trust for persons who were not objects of the powers. In his judgment the reason for its invalidity ought to be stated somewhat differently. The nephews and nieces, who survived the daughter, took vested interests in the settled legacy, her power to divest such interests was conferred upon her in order that she might select fiduciarily one or more as recipients of the testator's bounty, to the exclusion of the others or other of them upon a due consideration of their merits or needs. The general principles governing fraudulent appointments were considered in *Vatcher* v. *Paull* [1915] A.C. 372, 378; and *Duke of Portland* v. *Topham* (1864), 11 H.L. Cas. 32, 54. Those seeking to support the appointment relied on *In re Crawshay* (1890), 43 Ch. D. 615. He did not regard that case as a satisfactory one. Surer guidance could be obtained from *In re Wright* [1920] 1 Ch. 108. From that case he derived the following propositions: (1) That an intention to benefit a non-object might vitiate an appointment, whether that intention were successfully achieved or not; (2) that it was not necessary to establish any bargain; (3) that if there was originally a corrupt intention, the onus was shifted and rested on those who sought to show that it was abandoned; (4) that the letter to J and instructions to counsel when the wills of the daughter were drafted were admissible in evidence. He had come to the conclusion that the letter of 1910 was plainly indicative of a corrupt motive. There was no proof that any such motive was ever abandoned. The case was typically one of fraud and he so decided.

COUNSEL: *A. H. Droop; L. F. Mumford; Neville Gray,* K.C.; and *Ungoed-Thomas; G. A. Rink; C. D. Myles; Geoffrey Cross.*

SOLICITORS: *Lawrence, Graham & Co.; Farrer & Co.; Gilbert Samuel & Co.; Wellington Taylor & Sons.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

RULES AND ORDERS

S.R. & O., 1947, No. 721/L.10

SUPREME COURT, ENGLAND

FEES

THE SUPREME COURT (NON-CONTENTIOUS PROBATE) FEES ORDER, 1947. DATED APRIL 15, 1947

The Lord Chancellor, the Judges of the Supreme Court, and the Treasury, in pursuance of the powers and authorities vested in them respectively, by section 213 of the Supreme Court of Judicature (Consolidation) Act, 1925,* and sections 2 and 8 of the Public Offices Fees Act, 1879,† do hereby, according as the provisions of the above-mentioned enactments respectively authorise and require them, make, advise, consent to, and concur in, the following Order:—

1.—(1) The Fee set out in the Schedule to this Order shall be substituted for Fee No. 1 in Schedule I to the Supreme Court (Non-Contentious Probate) Fees Order, 1928.‡

(2) In Fee No. 1 in Schedule II to that Order the words "net real and personal estate" shall be substituted for the words "net personal estate".

2.—(1) This Order may be cited as the Supreme Court (Non-Contentious Probate) Fees Order, 1947.

(2) This Order shall come into operation on the 1st day of May, 1947.
Dated the 15th day of April, 1947.

Jowitt, C.
Goddard, C.J.
Greene, M.R.
Merriman, P.
R. J. Taylor } Lords Commissioners of His
C. James Simmons } Majesty's Treasury.

SCHEDULE

First Column	Second Column	Third Column
Item	Fee	Character of Stamp
Grants		
1. On Probates or Letters of Administration with or without the Will annexed :—		
If the net real and personal estate is sworn to be—		
Under the value of—		
£	£ s. d.	
2,000	15 0	
3,000	3 0 0	
4,000	4 0 0	
5,000	5 0 0	
6,000	6 0 0	
7,000	7 0 0	
8,000	8 0 0	
9,000	9 0 0	
10,000	10 0 0	
12,000	11 0 0	
14,000	12 0 0	
16,000	13 0 0	
18,000	14 0 0	
20,000	15 0 0	
25,000	17 0 0	
30,000	20 0 0	
35,000	23 0 0	
40,000	25 0 0	Impressed
45,000	27 0 0	
50,000	29 0 0	
60,000	33 0 0	
70,000	36 0 0	
80,000	39 0 0	
90,000	42 0 0	
100,000	45 0 0	
120,000	48 0 0	
140,000	51 0 0	
160,000	54 0 0	
180,000	57 0 0	
200,000	60 0 0	
250,000	64 0 0	
300,000	68 0 0	
350,000	72 0 0	
400,000	76 0 0	
500,000	81 0 0	
For every additional £100,000 or any fractional part of £100,000 a further and additional fee of	10 0 0	
NOTE 1.—The net real and personal estate is to be valued as shown in the Affidavit for Inland Revenue.		
NOTE 2.—This fee is not payable where any of the following fees is payable, viz. :—		
(*a*) Fee No. 2 in this Schedule (relating to certain estate not exceeding £500) ;		
(*b*) Fee No. 3 in this Schedule (relating to certain estates of soldiers and sailors) ; and		
(*c*) Fee No. 2 in Schedule II (relating to certain estate not exceeding £100).		

* 15 & 16 Geo. 5, c. 49. † 42 & 43 Vict. c. 58. ‡ S.R. & O. 1928 (No. 972) p. 1228.

OBITUARY

SIR WILLIAM CANN

His Honour Sir William Moore Cann, a former Judge of County Courts, died on Friday, 18th April, aged ninety. He was called in 1883 and practised at the Chancery Bar until 1914, when he was appointed County Court Judge on the Leicester Circuit. He was transferred to Sussex in 1921 and retired ten years later.

MR. F. A. W. COBBOLD

Mr. Francis Alfred Worship Cobbold, solicitor, of Messrs. Cobbold, Sons and Menneer, solicitors, of Ipswich, died on Monday, 21st April. He was admitted in 1908.

MR. J. M. GOVER, K.C.

Mr. John Mahan Gover, K.C., died on Friday, 18th April, aged eighty. He was called by the Middle Temple in 1889, and took silk in 1919. He had a large Chancery practice until his retirement some years ago.

MR. J. E. SPICKETT

Mr. James Edward Spickett, Registrar of Pontypridd County Court until his retirement in 1942, died on Wednesday, 2nd April, aged eighty-seven. He was admitted in 1882.

MR. A. E. WITHY

Mr. Alfred Ernest Withy, solicitor, of Messrs. Withy and Pooley, solicitors, of Swindon, died on Sunday, 30th March, aged eighty-six. He was admitted in 1882, was Clerk to the Swindon Borough Magistrates for forty years, and was the last living original member of the Wiltshire County Council.

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time :—

COTTON (CENTRALISED BUYING) BILL [H.C.]. [18th April.

FELIXSTOWE URBAN DISTRICT COUNCIL BILL [H.C.]. [18th April.

NATIONAL HEALTH SERVICE (SCOTLAND) BILL [H.C.]. [22nd April.

PRESERVATION OF RIGHTS OF THE SUBJECT BILL [H.L.]. [24th April.

For the better securing of the liberty of the subject.

RADIOACTIVE SUBSTANCES BILL [H.L.] [24th April.

To make provision with respect to radioactive substances and certain apparatus producing radiation.

Read Second Time :—

FOREIGN MARRIAGE BILL [H.L.]. [24th April.

TRAFALGAR ESTATES BILL [H.C.]. [24th April.

Read Third Time :—

ARMY AND AIR FORCE (ANNUAL) BILL [H.C.]. [23rd April.

DUDLEY CORPORATION BILL [H.L.]. [23rd April.

In Committee :—

EDUCATION (EXEMPTIONS) (SCOTLAND) BILL [H.L.]. [22nd April.

NAVAL FORCES (ENFORCEMENT OF MAINTENANCE LIABILITIES) BILL [H.C.]. [24th April.

TREATIES OF PEACE (ITALY, ROUMANIA, BULGARIA, HUNGARY AND FINLAND) BILL [H.C.]. [24th April.

HOUSE OF COMMONS

Read First Time :—

KINGSTON-UPON-HULL PROVISIONAL ORDER BILL [H.C.]. [21st April.

To confirm a Provisional Order made by one of His Majesty's Principal Secretaries of State under the Public Health Act, 1875, relating to Kingston-upon-Hull.

MARRIAGES PROVISIONAL ORDERS BILL [H.C.]. [24th April.

To confirm certain Provisional Orders made by one of His Majesty's Principal Secretaries of State under the Marriages Validity (Provisional Orders) Acts, 1905 and 1924.

Read Second Time :—

LUTON CORPORATION BILL [H.C.]. [21st April.

QUESTIONS TO MINISTERS

COMPENSATION (DEFENCE) ACT

Mr. G. THOMAS asked the Financial Secretary to the Treasury what steps he proposes to take to change s. 3 of the Compensation (Defence) Act, 1939, in view of the hardship caused by its implementation.

Mr. GLENVIL HALL : No amending legislation is contemplated. [21st April.

MINERS' HOUSES

THE EARL OF MANSFIELD asked His Majesty's Government whether the tenancy of dwelling-houses which have passed from the ownership of colliery companies to that of the State is still dependent upon occupation ; and whether a man who ceases to be employed in coal-mining, either through retirement or change of occupation, is liable to eviction by the Coal Board.

LORD CHORLEY : Dwelling-houses which have been taken over by the National Coal Board from colliery companies will, no doubt, continue to be occupied by the employees of the Board on the same terms as before. It is usually a condition that a workman who obtains a colliery house must vacate it on termination of colliery employment. [23rd April.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 685. **Act of Sederunt** anent Appeals under the Family Allowances Act, 1945. March 28.

No. 684. Act of Sederunt anent Re-introduction of Jury Trials. March 28.

No. 670. **Motor Vehicles** (Construction and Use) Regulations. April 12.

No. 697. **Price-Controlled Goods** (Restriction of Resale) Licence. April 18.

No. 680. **Regulation of Payments** (Italy, Republic of San Marino and Vatican City) Order. April 16.

No. 664. **Trading with the Enemy** (Authorisation) (Roumania) Order. April 14.

No. 666. Trading with the Enemy (Custodian) (Amendment) (Roumania) Order. April 14.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

NOTES AND NEWS

Honours and Appointments

The King has approved recommendations of the Home Secretary that Mr. THOMAS FREDERICK DAVIS be appointed a Metropolitan Magistrate in succession to Mr. Claud Mullins, who has resigned; and that Mr. GEORGE RAYMOND HINCHCLIFFE be appointed Recorder of Middlesbrough in succession to Sir Joshua Scholefield, K.C., who has resigned.

The King has approved the appointment of Mr. HILARY JENKINSON as Deputy Keeper of Public Records in succession to Sir Cyril Flower, who retired on 31st March.

Mr. SAMUEL GEOFFREY FOSTER has been appointed Town Clerk of Droitwich. He was admitted in 1935.

Notes

The annual general meeting of the Nottingham Incorporated Law Society was held at the Guildhall, Nottingham, on Friday, 18th April, when the following officers were elected for the ensuing year: President, Mr. A. C. Flewitt; Vice-President, Mr. J. Esam (Newark-on-Trent); Hon. Treasurer, Mr. H. D. Bright; Hon. Secretary, Mr. R. J. T. Smith.

In The Law Society's Final Examination held on 17th, 18th and 19th March, 1947, 301 candidates out of 464 were successful. The Sheffield Prize was awarded to Mr. Samuel Buchman and the John Mackrell Prize to Mr. Ronald Harold Edgar Heath. In the Trust Accounts and Bookkeeping Examination, held on 21st March, 1947, 538 candidates out of 738 were successful.

The Law Society Cricket Club has a full list of fixtures for the 1947 season, including a week's tour in August and matches against the Bar and the Institute of Chartered Accountants at Kennington Oval on 2nd and 18th June respectively. The club is in need of new playing members, and membership is open to members of The Law Society and to members of the Students' Rooms who are not yet admitted. The hon. secretary is Mr. W. Emrys Jones, M.B.E., 64, Stanley Road, Teddington, Middlesex. (Telephone: Molesey 3690 and Whitehall 5484.)

COURT PAPERS

SUPREME COURT OF JUDICATURE

EASTER SITTINGS, 1947

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota.	Appeal Court I.	Mr. Justice Vaisey.
Mon., May 5	Mr. Farr	Mr. Reader	Mr. Hay
Tues., ,, 6	Blaker	Hay	Farr
Wed., ,, 7	Andrews	Farr	Blaker
Thurs., ,, 8	Jones	Blaker	Andrews
Fri., ,, 9	Reader	Andrews	Jones
Sat., ,, 10	Hay	Jones	Reader

	Group A.		Group B.	
	Mr. Justice Roxburgh *Witness.*	Mr. Justice Wynn-Parry *Non-Witness.*	Mr. Justice Evershed *Non-Witness.*	Mr. Justice Romer *Witness.*
Mon., May 5	Mr. Andrews	Mr. Jones	Mr. Blaker	Mr. Farr
Tues., ,, 6	Jones	Reader	Andrews	Blaker
Wed., ,, 7	Reader	Hay	Jones	Andrews
Thurs., ,, 8	Hay	Farr	Reader	Jones
Fri., ,, 9	Farr	Blaker	Hay	Reader
Sat., ,, 10	Blaker	Andrews	Farr	Hay

STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

	Div. Months	Middle Price April 28 1947	Flat Interest Yield £ s. d.	‡ Approximate Yield with redemption £ s. d.
British Government Securities				
Consols 4% 1957 or after	FA	114	3 10 2	2 5 4
Consols 2½%	JAJO	95	2 12 8	—
War Loan 3% 1955–59	AO	106½	2 16 4	2 2 0
War Loan 3½% 1952 or after	JD	105½xd	3 6 4	2 8 1
Funding 4% Loan 1960–90	MN	117½	3 8 1	2 8 4
Funding 3% Loan 1959–69	AO	106¼	2 16 4	2 7 4
Funding 2¾% Loan 1952–57	JD	104½	2 12 8	1 15 9
Funding 2½% Loan 1956–61	AO	101½	2 9 3	2 6 3
Victory 4% Loan Av. life 18 years	MS	119½	3 6 11	2 12 6
Conversion 3½% Loan 1961 or after	AO	111	3 3 1	2 11 1
National Defence Loan 3% 1954–58	JJ	106	2 16 7	1 18 7
National War Bonds 2½% 1952–54	MS	102⅜	2 8 8	1 19 8
Savings Bonds 3% 1955–65	FA	106	2 16 7	2 3 5
Savings Bonds 3% 1960–70	MS	106¼	2 16 4	2 8 2
Treasury 3%, 1966 or after	AO	106	2 16 7	2 11 10
Treasury 2½%, 1975 or after	AO	96	2 12 1	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	101½	2 19 1	—
Guaranteed 2½% Stock (Irish Land Act, 1903)	JJ	101	2 14 5	—
Redemption 3% 1986–96	AO	111½	2 13 10	2 10 5
Sudan 4½% 1939–73 Av. life 16 years	FA	122½	3 13 6	2 14 10
Sudan 4% 1974 Red. in part after 1950	MN	115	3 9 7	—
Tanganyika 4% Guaranteed 1951–71	FA	105	3 16 2	2 9 3
Lon. Elec. T.F. Corp. 2½% 1950–55	FA	101½	2 9 3	—
Colonial Securities				
*Australia (Commonw'h) 4% 1955–70	JJ	111½	3 11 9	2 5 9
Australia (Commonw'h) 3½% 1964–74	JJ	110	2 19 1	2 10 4
*Australia (Commonw'h) 3% 1955–58	AO	104	2 17 8	2 9 5
†Nigeria 4% 1963	AO	119½	3 6 11	2 10 2
*Queensland 3½% 1950–70	JJ	104	3 7 4	—
Southern Rhodesia 3½% 1961–66	JJ	112½	3 2 3	2 8 10
Trinidad 3% 1965–70	AO	106	2 16 7	2 11 3
Corporation Stocks				
*Birmingham 3% 1947 or after	JJ	100½	2 19 8	—
*Leeds 3½% 1958–62	JJ	107	3 0 9	2 10 2
*Liverpool 3% 1954–64	MN	105	2 17 2	2 2 11
Liverpool 3½% Red'mable by agreement with holders or by purchase	JAJO	122½	2 17 2	—
London County 3% Con. Stock after 1920 at option of Corporation	MSJD	101	2 19 5	—
*London County 3½% 1954–59	FA	108⅛	3 4 6	2 3 11
*Manchester 3% 1941 or after	FA	100	3 0 0	—
*Manchester 3% 1958–63	AO	105	2 17 2	2 8 7
Met. Water Board "A" 1963–2003	AO	103½	2 18 0	2 14 7
* Do. do. 3% "B" 1934–2003	MS	101	2 19 5	—
* Do. do. 3% "E" 1953–73	JJ	103	2 18 3	2 8 2
Middlesex C.C. 3% 1961–66	MS	106	2 16 7	2 9 10
*Newcastle 3% Consolidated 1957	MS	105	2 17 2	2 8 7
Nottingham 3% Irredeemable	MN	107	2 16 1	—
Sheffield Corporation 3½% 1968	JJ	115	3 0 10	2 11 4
Railway Debenture and Preference Stocks				
Gt. Western Rly. 4% Debenture	JJ	124½	3 4 3	—
Gt. Western Rly. 4½% Debenture	JJ	125½	3 11 9	—
Gt. Western Rly. 5% Debenture	JJ	137½	3 12 9	—
Gt. Western Rly. 5% Rent Charge	FA	135½	3 13 10	—
Gt. Western Rly. 5% Cons. G'rteed.	MA	132½	3 15 6	—
Gt. Western Rly. 5% Preference	MA	120½	4 3 0	—

* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: Inland, £3; Overseas, £3 5s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).